

1214
No. 13050

United States
Court of Appeals
for the Ninth Circuit

GILBERT WADDELL,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of The Tax Court
of the United States

FILED

NOV 14 1951

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

JAMES T. BUTLER, Esq.

For Respondent:

JOHN D. PICCO, Esq.

The Tax Court of the United States

Docket No. 24483

GILBERT WADDELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1949

Aug. 8—Petition received and filed. Fee not paid.

Sep. 20—Fee paid. Check.

Oct. 4—Order to show cause on or before November 30, 1949 entered. Imperfect.

Oct. 31—Entry of appearance of James T. Butler as counsel filed.

Nov. 25—Amended petition filed by petitioner. Copy served 11/25/49.

Nov. 25—Order, that the order to show cause dated Oct. 4, 1949 is discharged and the proceeding is stricken from the calendar of November 30, 1949 and the respondent allowed the usual time to move or answer the amended petition, entered.

1950

Jan. 10—Answer to amended petition filed by General Counsel.

1950

Jan. 10—Request for hearing in Portland, Oregon, filed by General Counsel.

Jan. 17—Notice issued placing proceeding on Portland, Oregon, Calendar. Service of answer and request made.

Feb. 14—Request for Place of Hearing at Boise, Idaho, filed by petitioner. Denied 2/15/50.

Aug. 29—Hearing set Oct. 23, 1950, Portland.

Oct. 26—Hearing had before Judge Van Fossan on merits. Stipulation of Facts and Exhibits 1-A through 4-D filed. Petitioner's brief Dec. 26, 1950. Respondent's brief Feb. 9, 1951. Petitioner's reply Feb. 26, 1951.

Nov. 13—Transcript of Hearing 10/26/50 filed.

Dec. 21—Brief filed by taxpayer. Copy served.

1951

Feb. 9—Reply Brief filed by General Counsel.

Apr. 11—Memorandum Findings of Fact and Opinion rendered. J. Van Fossan. Decision will be entered for respondent. Copy served.

Apr. 11—Decision entered, Van Fossan J., Div. 9.

July 9—Petition for Review by U. S. Court of Appeals for the Ninth Circuit with assignments of error filed by taxpayer.

July 11—Proof of Service of Notice of Appeal and Petition for Review filed by General Counsel.

The Tax Court of the United States

Docket No. 24483

GILBERT WADDELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

AMENDED PETITION

The above-named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AGC:IB) dated March 4, 1949, and as a basis for this proceeding alleges as follows:

I.

That Petition is an individual with residence and address as follows: c/o Morrison-Knudsen Afghanistan, Inc., Kandahar, Afghanistan; that the return for the period here involved was filed with the Collector for the district of Idaho;

II.

That the notice of deficiency, a copy of which is marked "Exhibit A" and attached hereto, was mailed to Petitioner on or about March 4, 1949;

III.

That the taxes in controversy are income taxes for the calendar year, 1947, and in the amount of \$2,362.65 with interest at the rate of 6% per annum until paid, the whole of which has been determined with-

out [5] reference to the facts hereinafter set forth and the provisions of Section 116(a), U. A. Internal Revenue Code applicable thereto.

IV.

That the determination of tax as set forth in said notice of deficiency is based upon errors as follows:

That contrary to law in such cases made and provided, and the undisputed facts hereinafter set forth in paragraph V hereof, the Commissioner has denied to Petitioner tax exempt status as to income earned by him in a foreign country while he was a bona fide resident of that foreign country during the entire year 1947; that Petitioner's case is governed by the law as set forth in Section 116(a), of the U. S. Internal Revenue Code, and in Regulations 111, Section 29.116-1 (as amended), but that the Commissioner has unlawfully denied to Petitioner the benefits thereof, saying: "From the information submitted by you, it appears that you do not qualify to claim the benefits of the Internal Revenue Code, Section 116A. The tax on \$11,050 adjusted gross income is \$2,362.65."

V.

That the facts, upon which Petitioner relies as the basis for this proceeding, are as follows:

(a) That Petitioner was divorced from his former wife during the month of February, 1946, and at all times since said date he has been and now is a single man;

(b) That, as the issue of the marriage above-referred to, there were born three daughters, namely:

(Mrs.) Helene Burda, 421 8th St., Huntington Beach, Calif.

(Mrs.) Geraldine Surgeson, 836 Taylor St., Kennett Square, Penna., and Joanne Waddell, age 15, 421 8th Street, Huntington Beach, Calif., whose care and custody have been awarded to and are now vested in Petitioner.

(c) That pursuant to the decree of divorce, in the action referred to in paragraph V(a), above, Petitioner is obligated to pay and has paid each month since February, 1946, the sum of \$100, as alimony to his divorced spouse, and that the obligation to continue such payments will continue during the remainder of the joint lives of Petitioner and his former spouse;

(d) That prior to May 3, 1946, Petitioner had for approximately 25 years been employed by the United States Department of the Interior, Bureau of Reclamation, as an engineer, as a specially-trained expert in the use of soils in the construction of earth-dams, for irrigation and other purposes; that in said period of approximately 25 years, Petitioner had acquired a high Civil Service rating and had built up a very valuable and substantial retirement pension, which would become payable to him upon reaching retirement age, provided he continued to serve as an employee of the U. S. Government until that time.

(e) That heretofore and in the month of April, 1946, Petitioner was approached by agents of Morrison-Knudsen Afghanistan, Inc., a Nevada corporation, engaged in the performance of construction contracts in the Kingdom of Afghanistan, who offered

Petitioner employment with that corporation in that country;

(f) That as part of the inducement to Petitioner, said agents of said corporation advised Petitioner that he was one of very few men in the world who were expert in the use of soils in earth-dam construction; that said corporation and its affiliates were engaged in the construction of irrigation dams and related projects in many foreign countries; that in said engagements, the use of earth-dams would be required almost exclusively by economic and other factors; that present and anticipated projects would continue into the future for a long and indefinite period, estimated as likely to continue well beyond the time when Petitioner would wish to retire from construction work and that Petitioner could rely upon future foreign employment with said corporation and its affiliates for the remainder of his active professional life;

(g) That in reliance upon the inducements in paragraph V(f) described, Petitioner concluded to enter upon a career of foreign service with said corporation and its affiliates and, in doing so, to sacrifice the security offered by his employment with the Bureau of Reclamation and the valuable retirement benefits to which he would soon become entitled, as described in paragraph V(d) above; (that Petitioner made such a sacrifice for an offer of mere temporary employment, as contended by the Commissioner, seems improbable in the extreme, even if further proof against the contention were not available);

(h) That thereafter and on May 3, 1946, Peti-

tioner resigned from the Bureau of Reclamation by letter of that date, in which it was stated that the reason for resignation was to accept employment with a company engaged in irrigation development in foreign countries;

(i) That thereafter Petitioner entered into a contract with said corporation, dated May 9, 1946, pursuant to which he left the Port of New York on May 23, 1946, to take up his employment with said corporation in Afghanistan, which country he reached on or about the 13th day of June, 1946;

(j) That during the period beginning in the early part of April and ending when Petitioner left the United States on May 23, 1946, Petitioner discussed his plans with various people, and in doing so disclosed his intention of entering upon a career of foreign employment; that some of the persons to whom these disclosures were made were his daughters, his attorney, his immediate superior in the U. S. Reclamation Bureau and other persons with whom it was necessary to make the arrangements necessary in view of an extended and indefinite foreign residence and occupation;

(k) That the contract made on May 9, 1946, between Petitioner and the corporation, was, by its terms, limited to a period of slightly more than two years, but that the reason for the time limitation was for purposes of determining compensation, vacation and other extraneous matters and was never intended either by Petitioner or his employer to be significant as to the length of time for which Petitioner would be employed by the said corporation,

Petitioner employment with that corporation in that country;

(f) That as part of the inducement to Petitioner, said agents of said corporation advised Petitioner that he was one of very few men in the world who were expert in the use of soils in earth-dam construction; that said corporation and its affiliates were engaged in the construction of irrigation dams and related projects in many foreign countries; that in said engagements, the use of earth-dams would be required almost exclusively by economic and other factors; that present and anticipated projects would continue into the future for a long and indefinite period, estimated as likely to continue well beyond the time when Petitioner would wish to retire from construction work and that Petitioner could rely upon future foreign employment with said corporation and its affiliates for the remainder of his active professional life;

(g) That in reliance upon the inducements in paragraph V(f) described, Petitioner concluded to enter upon a career of foreign service with said corporation and its affiliates and, in doing so, to sacrifice the security offered by his employment with the Bureau of Reclamation and the valuable retirement benefits to which he would soon become entitled, as described in paragraph V(d) above; (that Petitioner made such a sacrifice for an offer of mere temporary employment, as contended by the Commissioner, seems improbable in the extreme, even if further proof against the contention were not available);

(h) That thereafter and on May 3, 1946, Peti-

tioner resigned from the Bureau of Reclamation by letter of that date, in which it was stated that the reason for resignation was to accept employment with a company engaged in irrigation development in foreign countries;

(i) That thereafter Petitioner entered into a contract with said corporation, dated May 9, 1946, pursuant to which he left the Port of New York on May 23, 1946, to take up his employment with said corporation in Afghanistan, which country he reached on or about the 13th day of June, 1946;

(j) That during the period beginning in the early part of April and ending when Petitioner left the United States on May 23, 1946, Petitioner discussed his plans with various people, and in doing so disclosed his intention of entering upon a career of foreign employment; that some of the persons to whom these disclosures were made were his daughters, his attorney, his immediate superior in the U. S. Reclamation Bureau and other persons with whom it was necessary to make the arrangements necessary in view of an extended and indefinite foreign residence and occupation;

(k) That the contract made on May 9, 1946, between Petitioner and the corporation, was, by its terms, limited to a period of slightly more than two years, but that the reason for the time limitation was for purposes of determining compensation, vacation and other extraneous matters and was never intended either by Petitioner or his employer to be significant as to the length of time for which Petitioner would be employed by the said corporation,

either in Afghanistan or elsewhere, and that said contract was written on a standard printed form in use by said corporation in connection with virtually all its employment of personnel in foreign countries, and that, despite the time limitation contained in said printed contract, both the said corporation and its entire group of employees in foreign countries consider that the employment under said uniform contract is permanent in duration and in no sense limited by the time period uniformly expressed therein;

(l) That Petitioner arrived in Afghanistan in the month of June, 1946, and immediately entered upon the duties of his employment; that he intended to and did then and there establish his residence in Afghanistan; that he lived in a brick building built and maintained for the convenience of its unmarried employees by said corporation and took his meals at a dining room also maintained on the same basis by said corporation; that Petitioner was at all times free to arrange for board and lodging elsewhere in Kandahar, Afghanistan, but that the quarters, food and water made available to him by his said employer were so far superior, from the standpoint of comfort, convenience and health considerations, that to exercise his freedom of choice in favor of other living arrangements would have been unjustifiable and dangerous in the extreme;

(m) That, by reason of the contractual relationships made and existing between Petitioner's employer and the Kingdom of Afghanistan, Petitioner is informed and believes that the Afghan Government

considers Petitioner to be an employee of the Afghan Government, whose compensation is paid by said Government through said corporation, acting as agent for said Government;

(o) That although, by its terms, Petitioner's contract of employment, as explained in paragraph V(k) above, terminated on June 20, 1948, Petitioner has continued to be employed by said corporation under a renewal or extension of said contract and that he has reason to believe that he will continue to be employed in foreign construction work for a long and indefinite future period;

(p) That Petitioner has, at all times herein mentioned, been aware of the tax benefit, accorded to U. S. Citizens acquiring foreign residence, by the terms of Section 116(a) of the U. S. Internal Revenue Code; that in view thereof he did everything he could do to establish foreign residence in the Kingdom of Afghanistan in the year 1946, so that said benefits would be available to him for the taxable calendar year 1947; that for the year 1947 Petitioner filed with the U. S. Collector at Boise, Idaho, a tax return, enclosing letter reporting his income for that year in full and specifically claiming tax-exempt status with regard thereto on the ground of foreign residence established in 1946, by Petitioner;

(q) That on or about June 13, 1948, Petitioner left Afghanistan on vacation and returned to the United States where he remained for several months, during which time he did not seek or engage in any gainful occupation and at the end of which he re-

turned to duty in Afghanistan, pursuant to the terms of his renewal contract, above-mentioned; that he arrived in Afghanistan on or about the 6th day of February, 1949, and there continued his employment until October, 1949, at which time he again left Afghanistan to visit the United States, the purposes of the latter trip being partly in the nature of a vacation and partly for the purposes of conferences with Stateside officials of his employer corporation, relative to past and future operations in Afghanistan, in so far as they relate to the employment of Petitioner in Afghanistan; that at the conclusion of his vacation and the conferences above-mentioned, Petitioner intends to return to Afghanistan and resume his foreign residence and the obligations of his employment contract in pursuance of his career in the field of earth-dam construction in foreign countries;

(r) That based upon the facts hereinabove set forth Petitioner is advised and believes and asserts the fact to be that at all times during the entire taxable calendar year, 1947, he was and now is a bona fide resident of Kandahar, Afghanistan; and that his entire income earned in that country in that year is exempt from taxation and that he owes no tax to the Government of the United States by reason of said earnings.

Wherefore, Petitioner Prays That this petition will be heard by the Tax Court of the United States at Boise, Idaho, or at some other nearby city, at an early date convenient to Petitioner and to the Court;

that at said hearing a Judgment may be entered herein finding that Petitioner was, during the entire year, 1947, a bona fide resident of Kandahar, Afghanistan; that the earnings of Petitioner in Afghanistan during the year 1947, are exempt from taxation; that the determination of the Commissioner to the contrary is unlawful and void and that the Petitioner be given and granted such other and further relief as to the Court may seem meet and just.

/s/ GILBERT WADDELL,
Petitioner.

Verification

State of California,
County of Alameda—ss.

Gilbert Waddell, being first duly sworn, upon oath deposes and says:

That he is the Petitioner named in the within and foregoing Petition; that he has read the same, knows the contents thereof and believes the facts therein stated to be true.

/s/ GEORGE WADDELL.

Subscribed and sworn to before me this 18th day of November, 1949.

[Seal] /s/ H. A. JOHNSON,
Notary Public.

EXHIBIT A

Treasury Department, Internal Revenue Service

Boise, Idaho

Account No. 8153113

March 4, 1949

In replying refer to: IT:AGC:IB

Gilbert Waddell

c/o Morrison Knudsen Afghanistan Inc.

Kabaul, Afghanistan

You are advised that the determination of your income tax liability for the taxable year 1947 discloses a deficiency of \$2,362.65 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 150 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 150 day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Collector of Internal Revenue, Boise, Idaho, for the attention of the Audit Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the

accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

COMMISSIONER

By JOHN R. VILEY,
Collector.

Enclosures: Statement, Form of Waiver.

Explanation of Deficiency on Return
No. 8153113

Gilbert Waddell

c/o Morrison Knudsen Afghanistan Inc.

Kabaul, Afghanistan

On January 28, 1949, you were notified of an apparent deficiency in your income tax return for the year 1947 as follows:

From the information submitted by you it appears that you do not qualify to claim the benefits of the Internal Revenue Code Section 116A.

The tax on \$11,050.00 adjusted gross income is \$2,362.65.

Received and Filed T.C.U.S. Nov. 25, 1949.

[Title of Tax Court and Cause.]

ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed herein admits and denies as follows:

1. Admits that petitioner is an individual and that the return for the period here involved was filed with the Collector of the District of Idaho. For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the remaining allegations contained in paragraph I of the amended petition.

2. Admits the allegations contained in paragraph II of the amended petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1947 and in the amount of \$2,362.65. Denies the remaining allegations contained in paragraph III of the amended petition.

4. Denies that he erred in his determination of the deficiency as shown by the notice of deficiency from which petitioner's appeal is taken. Specifically denies that he erred in the manner and form alleged in paragraph IV of the amended petition.

5 (a) to (r) inclusive. For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V (a) to (r) inclusive of the amended petition.

6. Denies generally and specifically each and every allegation contained in the amended petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of deficiency be approved.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

WILFORD H. PAYNE,
Division Counsel.

JOHN H. PIGG,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S. Jan. 10, 1950.

The Tax Court of the United States

MINUTES OF PROCEEDINGS

Date: October 26, 1950. Place: Portland, Ore.
Docket No. 24483.

Proceeding: Gilbert Waddell.

Assigned to: Judge Van Fossan, Division No. 9.

Counsel: For Petitioner: James F. Butler, Esq.,
400 Continental Bldg., Boise, Idaho. For Respondent: John D. Picco.

Stenographic Reporter: Clark. Hearing: 9:40-10:20 a.m. Sub. Transcript ordered: Yes.

On the merits: Yes.

Filed at hearing: Stipulation of Facts with Exhibits 1-A through 4-D attached.

Petitioner's brief: Dec. 26, 1950. Reply: Feb. 26, 1951.

Respondent's brief: Feb. 9, 1951.

Witnesses for Petitioner: Helene Burda.

Exhibits: Respondent's E. Income Tax Return—1947.

/s/ MARY Y. ROBERTS,
Acting Deputy Clerk.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys of record that the following facts are true and that the same may be so considered and accepted by the Court as offered in evidence by the parties to this proceeding: Provided however, that the stipulation shall be without prejudice to the right of either of said parties to introduce other and further evidence not inconsistent with the facts herein stipulated:

1. Petitioner is an individual citizen of the United States who timely filed his Federal income tax return for the year 1947 with the Collector for the District of Idaho at Boise, Idaho. Petitioner is on a cash receipts and disbursements basis, and files his income tax returns on a calendar year basis. The income tax return for the year 1947 may be offered

in evidence by respondent without objection and without further identification. The tax year in issue is the calendar year ending December 31, 1947.

2. Petitioner and Mable Waddell, his wife, were married in 1919 and divorced in 1946. As the issue of this marriage, there were born three daughters, all living. At the time of the divorce the two older daughters were and still are married and living with their respective husbands. The younger daughter, Joanne Waddell, was then and still is a minor, whose care and custody were by the divorce decree awarded to petitioner. The minor daughter resides with her married sister, Mrs. T. A. Burda, at 421 8th Street, Huntington Beach, California. Petitioner provides for and finances her upkeep and schooling. Petitioner has been a single man since the entry of the divorce decree on February 22, 1946.

3. Petitioner was born in Kansas in 1897, and prior to May 1946 made his residence in Irwin, Idaho. He was and is an engineer by occupation, and in 1921 accepted employment as an engineer with the Bureau of Reclamation, U. S. Department of Interior. Petitioner was continuously employed by the Bureau of Reclamation from 1921 until May 3, 1946, when he resigned to accept employment with Morrison-Knudsen Afghanistan, Inc., a Nevada corporation. In his letter of resignation, dated April 19, 1946, petitioner stated that he was resigning "in order to accept private employment with a company engaged in development of irrigation projects in foreign countries". Attached hereto and made a part hereof, as Exhibit 1, is a true and correct copy of said letter

of resignation. During his employment with the Bureau of Reclamation, petitioner had acquired a civil service P-3 rating and such retirement pension rights as provided by the governing laws and regulations.

4. Petitioner signed a contract of employment with Morrison-Knudsen Afghanistan, Inc., on May 9, 1946. Attached hereto and made a part hereof, as Exhibit 2, is a true and correct copy of said Employment Contract, dated May 9, 1946.

5. The Morrison-Knudsen Co., Inc., is a domestic corporation engaged in the construction business. This company established a foreign division composed of several subsidiary corporations prior to the end of the war for the purpose of contracting for and carrying on construction work in foreign countries. Morrison-Knudsen Afghanistan, Inc. is the subsidiary corporation which operates solely in the Kingdom of Afghanistan.

6. In 1946 Morrison-Knudsen Afghanistan, Inc., entered into a four-year contract with the Kingdom of Afghanistan whereby said corporation agreed to build certain roads and canals. A second four-year contract was executed by Morrison-Knudsen Afghanistan, Inc., and the Kingdom of Afghanistan in April of 1950, providing for the construction of certain storage dams.

7. Petitioner arrived in Afghanistan on June 13, 1946, and worked for two years, the period required by his contract. Petitioner left Afghanistan on June 13, 1948, and returned to the United States at company expense, arriving on June 20, 1948. He re-

mained in the United States for the remainder of the year. On January 22, 1949, he signed a second contract of employment with Morrison-Knudsen Afghanistan, Inc. Attached hereto and made a part hereof, as Exhibit 3, is the original copy of said Employment Contract dated January 22, 1949. He left the United States on January 27, 1949, and arrived in Afghanistan on February 6, 1949. Petitioner worked until October of 1949, when the company terminated his contract pursuant to paragraph 4 thereof, because of an enforced reduction of personnel due to temporary curtailment of construction funds. Thereupon, petitioner returned to the United States, at company expense, arriving on October 28, 1949. Petitioner lived in the United States until approximately May 11, 1950, when he signed a third contract of employment with Morrison-Knudsen Afghanistan, Inc. This contract is substantially similar in its terms to the employment contracts dated May 9, 1946 (Exhibit 2), and January 22, 1949 (Exhibit 3). Petitioner departed for Afghanistan on May 11, 1950, and at the time of the trial of said proceeding was serving the company in Afghanistan pursuant to said contract of employment.

8. Petitioner's entire income during the calendar year 1947 was earned by him while employed in the Kingdom of Afghanistan, where he was physically present during the whole of said year.

9. At all times while employed in Afghanistan, petitioner lived in quarters furnished by the company, namely, in a brick building built by the com-

pany and maintained for its employees, where he received his board and lodging free of cost. Petitioner was free to obtain outside board and lodging, but he did not, because had he done so he would have had to pay for same out of his own pocket, moreover the board and lodging so purchased would have been inferior. While thus employed in Afghanistan, petitioner maintained no home, residence building or apartment in the United States. Petitioner did not participate in local politics nor did he engage in trade. Petitioner did not pay any taxes to the Afghan authorities, and no tax was ever levied upon him by the Kingdom of Afghanistan, nor did the company pay any taxes on his behalf.

10. While in the United States from June 20, 1948, to January 22, 1949, petitioner visited friends and took care of his personal affairs at Boise, Idaho, and elsewhere, and stayed at the homes of his married daughters and of his sister in California, Idaho and Nevada. He stayed with them for approximately three and one-half months, and for almost two and one-half months he lived in a rented apartment in Berkeley, California. While in the United States from October 28, 1949, to May 11, 1950, petitioner lived approximately one month at the homes of his married daughters and approximately six months in a rented apartment in Berkeley, California. Petitioner was not under any contractual obligation to the company or any other employer, while in the United States during the years 1947 to 1949, inclusive, and received no compensation from any em-

ployer for work done in the United States or elsewhere.

11. Petitioner applied for a passport on April 13, 1946, prior to his departure for Afghanistan. At that time he stated that he was domiciled in the United States, and that his permanent residence was 316 Broadway, Boise, Idaho, which is the address of the general business offices of Morrison-Knudsen Co., Inc. On June 24, 1947, petitioner went to the American Consulate in Kabul, Afghanistan, and made application for registration. In this application he stated that his legal residence in the United States was Boise, Idaho, and he further stated that "I intend to return to the United States within one year to reside permanently." On May 26, 1948, he applied for an extension of his passport. On April 26, 1950, he applied for a passport, and one was issued on April 27, 1950. At that time he stated that his permanent residence was 421 8th Street, Huntington Beach, California, which is the address of T. A. Burda, petitioner's son-in-law. Petitioner does not own or have any financial interest in 421 8th Street, Huntington Beach, California, and has never resided there except as a guest of his son-in-law and daughter. Attached hereto and made a part hereof, as Exhibit A, are duly certified copies of applications by petitioner for passport, for passport renewals and for registration in Afghanistan.

12. Subject to the approval and consent of the Court, either of the parties hereto may withdraw any or all of the exhibits attached hereto, or as may be otherwise received in evidence at this proceeding,

for the purpose of preparing and substituting in their stead photostat copies thereof.

/s/ JAMES F. BUTLER,
Attorney for Petitioner.

/s/ CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

EXHIBIT No. 1

Idaho Falls, Idaho, April 19, 1946

Commissioner, Washington, D. C.

Chief Engineer, Denver

Regional Director, Boise

Through Project Engineer, Idaho Falls, Idaho
Gentlemen:

In order to accept private employment with a company engaged in development of irrigation projects in foreign countries, I hereby submit my resignation from the War Service Indefinite Appointment as Engineer P-3, assigned to duties on the Palisades Project, Idaho Falls, Idaho, effective as of close of business May 3, 1946.

My forwarding address will be: c/o Mr. Chas. Elliott, 2905-6 Chanin Bldg., 124 E. 42 St., New York, N. Y. (To be forwarded to Morrison-Knudsen Co., Afghanistan.)

Very truly yours,

/s/ GILBERT WADDELL

[Stamped]: Received May 13, 11:54 a.m., '46.
Bureau of Reclamation, Washington, D. C.

EXHIBIT No. 2

Morrison-Knudsen Afghanistan, Inc.

SUPERVISORY EMPLOYMENT CONTRACT

Name of Employee: Gilbert Waddell.

Position: Field Engineer.

Social Security Number: 519-20-7340.

This Agreement made and entered into this 9th day of May, 1946, by and between Morrison-Knudsen Afghanistan, Inc., a Nevada corporation, hereinafter called "Employer," and Gilbert Waddell of Boise, Idaho, hereinafter called "Employee."

Witnesseth:

Whereas, Employer is engaged in the performance of a construction contract in the Kingdom of Afghanistan and desires to retain the services of Employee for work in connection with said construction contract.

Now, Therefore, in consideration of the premises and the mutual covenants, agreements and conditions hereinafter contained, the parties do hereby agree as follows:

1. Employment Subject to Construction Contract

Employer employs Employees for certain services in the construction work to be performed by Employer under said construction contract and said employment is in all respects subject to the provisions of said construction contract and the reasonable requirements and interpretations thereof.

2. Place of Employment

The services of Employee shall be performed in

Exhibit No. 2—(Continued)

Afghanistan at any one or more of the places therein which may be designated by Employer, or, at Employer's option, at such other place or places outside said country which Employer may designate in connection with the performance of said construction contract.

3. Position

The position for which Employee represents he is qualified and for which he is employed is that of Field Engineer.

If Employee is used in any equivalent or lower classification than that for which he is hired to which he may hereafter be assigned by Employer he will perform work in such classification to the best of his ability at the salary specified in Paragraph 5 hereof. Employer may, however, reclassify Employee to higher pay rate classification, but no payment of salary or wages will be made at such higher rate until, in the opinion of the Employer, the Employee has demonstrated his ability to perform the duties of the higher classification. At any time thereafter, Employer may terminate such reclassification and return Employee to his original classification or equivalent thereof, whereupon Employee shall be returned to his original rate of pay.

4. Period of Employment

The period of services provided for by this Contract shall be twenty-four (24) months at the site of the work after Employee's arrival at such site, provided that in the event Employer's construction

Exhibit No. 2—(Continued)

contract is completed or terminated before the expiration of said period, this Contract shall thereupon terminate, and Employer shall only be obligated to pay Employee for services rendered to the date of such termination or completion and salary during the return trip to the United States as provided in Paragraph 6 and return travel expenses as provided in Paragraph 8.

5. Salary Rate: Vacation

Employee shall receive for services performed hereunder the sum of \$850.00 dollars per month lawful money of the United States of America which shall be the whole salary and compensation agreed upon, except as hereinafter provided, for the entire period of service, and payment to and acceptance thereof by Employee shall operate as a full release to Employer. Employee agrees to devote his full time, attention, skill and ability to the performance of the duties of the position for which he is hired or to which he may be reassigned as provided in Paragraph 3 hereof and shall work as many hours per day and days per week as shall be necessary to perform such duties to the satisfaction of Employer.

After Employee has worked at his designated place of employment for a period of twelve (12) full months, he shall be entitled to vacations with pay, or pay in lieu of vacations, in accordance with the following provisions:

(1) The total vacation shall be for a period of thirty (30) days.

Exhibit No. 2—(Continued)

(2) The time for starting a vacation shall be determined and established by Employer; provided, however, that if Employer delays the starting of vacation after the expiration of twelve months' employment on the job site, the period of delay shall be included in determining the remaining period of service at the job site which would entitle Employee to vacations for his second year of service.

(3) Such vacations shall be with pay at Employee's base rate of pay, excluding board and lodging, or any allowance in lieu thereof, as of the time the vacation is started.

(4) In the event that Employee elects, subject to consent of Employer, not to take a vacation and continue working, he shall be entitled to receive in lieu of said vacation one month's salary, which salary shall be his base rate of pay, excluding board and lodging, or any allowance in lieu thereof, at the time he foregoes taking vacation. Said month's salary in lieu of vacation shall be paid to Employee at the time he makes his election to forego taking a vacation.

(5) In the event this contract is not renewed at the expiration of the period of employment provided herein, Employee shall be paid one month's salary at his base rate of pay, upon his return to the United States, in lieu of earned vacation.

6. Date of Commencement of Salary

Salary shall commence four days prior to the date on which Employee has been advised to report at point of leaving the continental limits of the United

Exhibit No. 2—(Continued)

States enroute to the site of the work. Except as provided in Paragraph 10 herein, salary shall continue for four days after Employee returns to the continental limits of the United States, but in no case shall this additional number of days exceed a total of five days excluding the day of the Employee's arrival within the continental limits of the United States.

7. Transportation and Travel Allowance

Transportation from Boise, Idaho (point of hire) to Kabul, Afghanistan (site of work) shall be paid by Employer. Employer shall select the mode of transportation, provided Employee shall not be required to travel by plane without his consent and provided, further, that transportation shall be at least tourist class.

From the date that Employee leaves his point of hire enroute to the site of work, and until he shall arrive at the site of work, Employer shall pay Employee's expenses on a per diem basis at rate of \$5.00 per day; provided, however, that if the mode of transportation selected by the Employer shall include meals, at no cost to Employee, or if Employer shall elect to furnish meals to Employee while enroute, without expense to Employee, the per diem allowance herein provided for shall not be paid to Employee.

The per diem allowance herein provided for shall represent the full extent of Employer's liability for expenses incurred by Employee while enroute to job site, except for the following items of expense: hotel

Exhibit No. 2—(Continued)

bills for room only, costs incidental to securing passport and visas, cost of passport photographs; cost of medical examination, inoculations, vaccinations, and finger printing or other means of identification required by Employer.

Employee shall pay the foregoing excepted items of expense at the time they are incurred and shall obtain receipts therefor; Employee shall submit to Employer an itemized account covering these exempted items, and Employer shall reimburse Employee therefor when the same are presented.

8. Return Travel Expense

If Employee completes this contract in accordance with the terms hereof and said contract is not terminated by Employer under the provisions of Paragraph 10 hereof, he shall be returned from job site to the point of hire at Employer's expense. Employer shall select the mode of transportation. Per diem allowance and the additional items of expense allowable under the terms of Paragraph 7 for the trip to the site of the work shall be allowed for the return trip and shall be paid by Employer as provided in Paragraph 7 hereof.

9. Workmen's Compensation Insurance

Employer will provide by insurance or otherwise for securing payment of compensation and other benefits to Employee or his dependents under the provisions of the Workmen's Compensation Act of the State where Employee is hired.

Exhibit No. 2—(Continued)

10. Termination of Contract

If the services of Employee are not satisfactory to Employer or if he is not qualified for the position for which he is hired, or is negligent in his duties, or displays bad temper, or is or becomes addicted to the use of alcoholic drinks or drugs, or is insubordinate, or contracts venereal disease, Employee may be discharged by Employer and this contract shall terminate forthwith. In such case his employment and salary shall thereupon cease and he shall forfeit his right to payment of salary and expense allowance on the return trip to the United States. If Employee shall be discharged for one or more of the foregoing reasons, and if the laws or decrees of the country in which Employee shall be rendering services hereunder require Employer to return Employee to the United States, Employee agrees to reimburse Employer for any and all expenses incidental to said return, including cost of return transportation, which Employer may be required to pay. Employee hereby authorizes Employer to retain any and all salary or money withheld in accordance with Paragraph 14, or so much thereof as may be required, to reimburse Employer for such expenses.

It is agreed that Employer may discharge Employee if requested to do so by the Ministry of Public Works of the Kingdom of Afghanistan or his duly authorized representative and such discharge shall not constitute a breach of this Contract by Employer. Employee shall be paid salary earned to the date of such discharge and shall return to the United States

Exhibit No. 2—(Continued)

forthwith and in the discretion of Employer shall receive salary and travel expense on the return trip in the manner and for the periods specified in Paragraph 8.

11. Passport Requirements: Physical Examination

It is a condition of this Contract that Employee shall obtain a draft deferment if he is subject to the provisions of the United States Selective Service Act, and shall be able to and shall obtain a passport and all other documents or permits required for departure from the United States and travel to and entry into the country where he is to be employed. Employees shall pass a medical examination by a physician selected by Employer and shall obtain such vaccinations or inoculations as shall be required by Employer.

12. Board and Lodging

Employer agrees to furnish Employee with board and lodging during the term of this contract, or cash allowance in lieu thereof at Employer's option.

13. Salary Payment

Salary shall be paid once a calendar month and within a reasonable time following the end of the month in which such salary shall be earned. Employee hereby authorizes and directs the Employer to distribute his salary as follows: \$50.00 in Afghanistan and balance to First Security Bank of Idaho, Idaho Falls, Idaho.

If Employee elects to receive payment of a portion of his salary in Afghanistan such amount shall

Exhibit No. 2—(Continued)

be paid to him in Afghanis at the official rate of exchange.

14. Withholding from Salary

Employee agrees that Employer shall withhold from the salary of Employee an amount equal to the transportation costs referred to in Paragraph 8. However, not more than one-third of Employee's earnings for any month shall be so withheld. The amount thus withheld shall be refunded to Employee upon completion of this Contract. If Employee quits or is discharged for any of the reasons specified in Paragraph 10 hereof, the amount withheld shall be applied by Employer against the costs which Employer may incur in returning Employee to United States and the balance remaining, if any, shall be refunded to Employee.

15. Income or Other Taxes

Employer will pay and not recharge to Employee income or any other taxes imposed by any country on salary earned by Employee under this Contract, other than taxes imposed by United States of America or any state thereof.

16. Extent of Agreement

This Contract embodies the whole agreement between the parties hereto and there are no inducements, provisos, terms, conditions or obligations made or entered into by Employer other than contained herein. No modification of this agreement shall be made except by instrument in writing signed by Employee and Employer's duly authorized representative.

Exhibit No. 2—(Continued)

17. Employee to Observe Afghan Laws

The Employee shall respect and obey all Afghan laws, rules and regulations and shall never interfere with the Afghan political or religious affairs either directly or indirectly, and he shall not engage in trade.

18. Notice in Event of Accident

In the event of serious accident, illness or other emergency affecting Employee, Employer shall notify Mrs. J. D. Gillies at Ruth, Nevada. This address may be considered as Employee's permanent address, or the address of the person with whom Employer may communicate concerning personal matters relating to Employee.

In Witness Whereof, Employer and Employee have executed this agreement the day and year first hereinabove written.

MORRISON-KNUDSEN AFGHAN-
ISTAN, INC.,

By C. E. ELLIOTT,
Manager, New York Office.

.....
Employee

Witness:

Passport applied for: April 13, 1946, Washington,
D. C. Salary to commence: May 9, 1946.

EXHIBIT No. 3

Morrison-Knudsen Afghanistan, Inc.

SUPERVISORY EMPLOYMENT CONTRACT

Name of Employee: Gilbert Waddell.

Position: Construction Engineer.

Society Security Number: 519-20-7340.

This Agreement made and entered into this 27th day of January, 1949, by and between Morrison-Knudsen Afghanistan, Inc., a Nevada corporation, hereinafter called "Employer," and Gilbert Waddell of Huntington Beach, California, hereinafter called "Employee."

Witnesseth:

Whereas, Employer is engaged in the performance of a construction contract in the Kingdom of Afghanistan and desires to retain the services of Employee for work in connection with said construction contract.

Now, Therefore, in consideration of the premises and the mutual covenants, agreements and conditions hereinafter contained, the parties do hereby agree as follows:

1. Employment Subject to Construction Contract

Employer employs Employee for certain services in the construction work to be performed by Employer under said construction contract and said employment is in all respects subject to the provisions of said construction contract and the reasonable requirements and interpretations thereof.

Exhibit No. 3—(Continued)

2. Place of Employment

The services of Employee shall be performed in Afghanistan at any one or more of the places therein which may be designated by Employer, or, at Employer's option, at such other place or places outside said country which Employer may designate in connection with the performance of said construction contract.

3. Position

The position for which Employee represents he is qualified and for which he is employed is that of Construction Engineer.

If Employee is used in any equivalent or lower classification than that for which he is hired to which he may hereafter be assigned by Employer he will perform work in such classification to the best of his ability at the salary specified in Paragraph 5 hereof. Employer may, however, reclassify Employee to higher pay rate classification, but no payment of salary or wages will be made at such higher rate until, in the opinion of the Employer, the Employee has demonstrated his ability to perform the duties of the higher classification. At any time thereafter, Employer may terminate such reclassification and return Employee to his original classification or equivalent thereof, whereupon Employee shall be returned to his original rate of pay.

4. Period of Employment

The period of services provided for by this Contract shall be twenty-four (24) months at the site of

Exhibit No. 3—(Continued)

the work after Employee's arrival at such site, provided that in the event Employer's construction contract is completed or terminated before the expiration of said period, this Contract shall thereupon terminate, and Employer shall only be obligated to pay Employee for services rendered to the date of such termination or completion and salary during the return trip to the United States as provided in Paragraph 6 and return travel expenses as provided in Paragraph 8.

5. Salary Rate: Vacation

Employee shall receive for services performed hereunder the sum of \$750.00 dollars per month lawful money of the United States of America which shall be the whole salary and compensation agreed upon, except as hereinafter provided, for the entire period of service, and payment to and acceptance thereof by Employee shall operate as a full release to Employer. Employee agrees to devote his full time, attention, skill and ability to the performance of the duties of the position for which he is hired or to which he may be reassigned as provided in Paragraph 3 hereof and shall work as many hours per day and days per week as shall be necessary to perform such duties to the satisfaction of Employer.

After Employee has worked at his designated place of employment for a period of twelve (12) full months, he shall be entitled to vacations with pay, or pay in lieu of vacations, in accordance with the following provisions:

Exhibit No. 3—(Continued)

(1) The total vacation shall be for a period of thirty (30) days.

(2) The time for starting a vacation shall be determined and established by Employer; provided, however, that if Employer delays the starting of vacation after the expiration of twelve months' employment on the job site, the period of delay shall be included in determining the remaining period of service at the job site which would entitle Employee to vacations for his second year of service.

(3) Such vacations shall be with pay at Employee's base rate of pay, excluding board and lodging, or any allowance in lieu thereof, as of the time the vacation is started.

(4) In the event that Employee elects, subject to consent of Employer, not to take a vacation and continue working, he shall be entitled to receive in lieu of said vacation one month's salary, which salary shall be his base rate of pay, excluding board and lodging, or any allowance in lieu thereof, at the time he foregoes taking vacation. Said month's salary in lieu of vacation shall be paid to Employee at the time he makes his election to forego taking a vacation.

(5) In the event this contract is not renewed at the expiration of the period of employment provided herein, Employee shall be paid one month's salary at his base rate of pay, upon his return to the United States, in lieu of earned vacation.

6. Date of Commencement of Salary

Salary shall commence one day prior to the date

Exhibit No. 3—(Continued)

on which Employee has been advised to report at point of leaving the continental limits of the United States enroute to the site of the work. Except as provided in Paragraph 10 herein, salary shall continue for five days after Employee returns to the continental limits of the United States, but in no case shall this additional number of days exceed a total of five days excluding the day of the Employee's arrival within the continental limits of the United States.

7. Transportation and Travel Allowance

Transportation from San Francisco, Calif. (point of hire) to Afghanistan (site of work) shall be paid by Employer. Employer shall select the mode of transportation, provided Employee shall not be required to travel by plane without his consent and provided, further, that transportation shall be at least tourist class.

From the date that Employee leaves his point of hire enroute to the site of work, and until he shall arrive at the site of work, Employer shall pay Employee's expenses on a per diem basis at rate of \$5.00 per day; provided, however, that if the mode of transportation selected by the Employer shall include meals, at no cost to Employee, or if Employer shall elect to furnish meals to Employee while enroute, without expense to Employee, the per diem allowance herein provided for shall not be paid to Employee.

The per diem allowance herein provided for shall

Exhibit No. 3—(Continued)

represent the full extent of Employer's liability for expenses incurred by Employee while enroute to job site, except for the following items of expense: hotel bills for room only, costs incidental to securing passport and visas, cost of passport photographs; cost of medical examination, inoculations, vaccinations, and finger printing or other means of identification required by Employer.

Employee shall pay the foregoing excepted items of expense at the time they are incurred and shall obtain receipts therefor; Employee shall submit to Employer an itemized account covering these exempted items, and Employer shall reimburse Employee therefor when the same are presented.

8. Return Travel Expense

If Employee completes this contract in accordance with the terms hereof and said contract is not terminated by Employer under the provisions of Paragraph 10 hereof, he shall be returned from job site to the point of hire at Employer's expense. Employer shall select the mode of transportation. Per diem allowance and the additional items of expense allowable under the terms of Paragraph 7 for the trip to the site of the work shall be allowed for the return trip and shall be paid by Employer as provided in Paragraph 7 hereof.

9. Workmen's Compensation Insurance

Employer will provide by insurance or otherwise for securing payment of compensation and other benefits to Employee or his dependents under the

Exhibit No. 3—(Continued)

provisions of the Workmen's Compensation Act of the State where Employee is hired.

10. Termination of Contract

If the services of Employee are not satisfactory to Employer or if he is not qualified for the position for which he is hired, or is negligent in his duties, or displays bad temper, or is or becomes addicted to the use of alcoholic drinks or drugs, or is insubordinate, or contracts venereal disease, Employee may be discharged by Employer and this contract shall terminate forthwith. In such case his employment and salary shall thereupon cease and he shall forfeit his right to payment of salary and expense allowance on the return trip to the United States. If Employee shall be discharged for one or more of the foregoing reasons, and if the laws or decrees of the country in which Employee shall be rendering services hereunder require Employer to return Employee to the United States, Employee agrees to reimburse Employer for any and all expenses incidental to said return, including cost of return transportation, which Employer may be required to pay. Employee hereby authorizes Employer to retain any and all salary or money withheld in accordance with Paragraph 14, or so much thereof as may be required, to reimburse Employer for such expenses.

It is agreed that Employer may discharge Employee if requested to do so by the Ministry of Public Works of the Kingdom of Afghanistan or his duly authorized representative and such discharge shall

Exhibit No. 3—(Continued)

not constitute a breach of this Contract by Employer. Employee shall be paid salary earned to the date of such discharge and shall return to the United States forthwith and in the discretion of Employer shall receive salary and travel expense on the return trip in the manner and for the periods specified in Paragraph 8.

11. Passport Requirements: Physical Examination

It is a condition of this Contract that Employee shall obtain a draft deferment if he is subject to the provisions of the United States Selective Service Act, and shall be able to and shall obtain a passport and all other documents or permits required for departure from the United States and travel to and entry into the country where he is to be employed. Employee shall pass a medical examination by a physician selected by Employer and shall obtain such vaccinations or inoculations as shall be required by Employer.

12. Board and Lodging

Employer agrees to furnish Employee with board and lodging during the term of this contract, or cash allowance in lieu thereof at Employer's option.

13. Salary Payment

Salary shall be paid once a calendar month and within a reasonable time following the end of the month in which such salary shall be earned. Employee hereby authorizes and directs the Employer to distribute his salary as follows: As per salary allotment agreement.

Exhibit No. 3—(Continued)

If Employee elects to receive payment of a portion of his salary in Afghanistan such amount shall be paid to him in Afghanistan at the official rate of exchange.

14. Withholding from Salary

Employee agrees that Employer shall withhold from the salary of Employee an amount equal to the transportation costs referred to in Paragraph 8. However, not more than one-third of Employee's earnings for any month shall be so withheld. The amount thus withheld shall be refunded to Employee upon completion of this Contract. If Employee quits or is discharged for any of the reasons specified in Paragraph 10 hereof, the amount withheld shall be applied by Employer against the costs which Employer may incur in returning Employee to United States and the balance remaining, if any, shall be refunded to Employee.

15. Income or Other Taxes

Employer will pay and not recharge to Employee income or any other taxes imposed by any country on salary earned by Employee under this Contract, other than taxes imposed by United States of America or any state thereof.

16. Extent of Agreement

This Contract embodies the whole agreement between the parties hereto and there are no inducements, provisos, terms, conditions or obligations made or entered into by Employer other than contained herein. No modification of this agreement

Exhibit No. 3—(Continued)

shall be made except by instrument in writing signed by Employee and Employer's duly authorized representative.

17. Employee to Observe Afghan Laws

The Employee shall respect and obey all Afghan laws, rules and regulations and shall never interfere with the Afghan political or religious affairs either directly or indirectly, and he shall not engage in trade.

18. Notice in Event of Accident.

In the event of serious accident, illness or other emergency affecting Employee, Employer shall notify: T. A. Burda at 421 8th Street, Huntington Beach, California. This address may be considered as Employee's permanent address, or the address of the person with whom Employer may communicate concerning personal matters relating to Employee.

In Witness Whereof, Employer and Employee have executed this agreement the day and year first hereinabove written.

MORRISON-KNUDSEN AFGHAN-
ISTAN, INC.,

By S. H. SCHENCK,

GILBERT WADDELL,
Employee.

Witness:

ERIC G. MADSEN

MAXINE APPLEWHITE

Passport applied for: Passport Received. Salary to commence January 22, 1949.

EXHIBIT A

No. 4629

United States of America

Department of State

To all to whom these presents shall come, Greeting:

I Certify That the documents hereunto annexed are true copies from the files of this Department.

In testimony whereof, I, Dean Acheson, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this fourth day of August, 1950.

[Seal] /s/ DEAN ACHESON,
Secretary of State

/s/ By M. P. CHAUVIN,
Authentication Officer,
Department of State.

EXHIBIT A-2

DEPARTMENT OF STATE
PASSPORT APPLICATIONBudget Form No. 42-2000
Approved August 1949

FORM FOR NATIVE CITIZEN

(Successor of 1407)

No. **THU29**
SAN FRANCISCO SERIES
AUTH. BY TELEGRAM OF

APR 27 1950

ISSUED APR 27 1950

UNITED STATES OF AMERICA
STATE OF California
COUNTY OF San FranciscoExecute and attach PART TWO if members of
family are to be included in passportI, Gilbert Waddell

(Name in full)

a CITIZEN OF THE UNITED STATES,

do hereby apply to the Department of State, at Washington, for a passport. I solemnly swear that I was born at

Emporia (Town or city) Kansas (State or country) on June 27 1897 (Date)I am domiciled in the United States, my permanent residence being at 421 - 8th Street (Street address)Huntington Beach (Town or city) State of California

I have resided outside the United States as follows:

(State name of, and period of residence in, each foreign country)

Afghanistan from May 1946 to June 19484 (Names of countries) from Jan. 1949 to Oct. 1949My father, O.P. Waddell

(Name)

was born at Not knownon or about _____, and is now residing at Deceased

(The following portion in this block to be filled in only by a person whose father was not born in the United States)

My father emigrated to the United States on or about _____

(Month)

(Year)

resided

years continuously in the United States from 1 _____ to 1 _____, and was naturalized as a citizen of the United

States before the _____ Court of _____

at _____ (City)

(State)

on _____

(Month and day)

(Year)

My mother, Hennrotta Waddell

(Name)

was born at Not knownon or about _____, and is now residing at Deceased

(The following portion in this block to be filled in only by a person whose mother was not born in the United States)

My mother emigrated to the United States on or about _____

(Month)

(Year)

resided

years continuously in the United States from 1 _____ to _____ She acquired citizenship in the United States

by _____

DESCRIPTION OF APPLICANT

Height 6 feet, 1 1/2 inches.Hair BrownEyes BlueDistinguishing marks or features None
(Note any marks or scars on

hands or face by which applicant may be identified)

Place of birth Emporia Kansas
(City and State)Date of birth June 27, 1897
(Month, day, and year)Occupation Civil Engineer

MAILING ADDRESS

(Print complete address plainly)

Gilbert Waddell
46 Morrison Knudsen
660 Market, Room 40
San Francisco 4, Calif.

(Do not use this space)

PASSPORT FEE REC'D.

MAY - 9 1950

215726

My last American passport was obtained from Washington on May 22nd 1946
(Insert Washington or location of issuing office) (Date)and is submitted herewith for cancellation ✓see Cancellation & return
(Give disposition of passport if it cannot be returned)

My last passport was obtained from None on _____ (Date)
(Insert Washington or location of office abroad)

and is submitted herewith for cancellation _____
(Give disposition of passport if it cannot be submitted)

I intend to leave the United States from the port of New York City, N.Y.
(Part of departure)
about May 10, 1946, sailing on board the Do not know
(Name of ship)

I intend to visit the following countries for the purposes indicated:

Afghanistan Engineer on construction project
(Name of countries to be visited) (Purpose of visit)

and I intend to return to the United States within 3 _____
(months—years)

ADDRESS

I request that my passport be mailed to the following address:

(Note.—A passport will not be mailed to a local address unless the holder is the applicant's place of permanent residence.)

Name Mr. Gilbert Waddell
Morrison-Knudsen Company
Number and street 2905-6 Chanin Bldg.
124 E. 42nd St.
City and State New York, N.Y.

DESCRIPTION AND PHOTOGRAPH

Height 6 feet, 1½ inches.

Hair Brown

Eyes Blue

Distinguishing marks or features None
(Note any marks or scars on hands or face)

by which applicant may be identified)

Place of birth Emporia, Kansas
(City and State)

Date of birth June 27, 1897
(Month, day, and year)

Occupation Engineer



I solemnly swear that the statements made on both sides of this application are true and that the photograph attached hereto is a likeness of me.

I ~~have~~ have not been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post or employment under the government of a foreign state or political subdivision thereof; voted in a political election in a foreign state or participated in an election or plebiscite to determine the sovereignty over foreign territory; made a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state; been convicted by court martial of deserting the military or naval service of the United States in time of war; been convicted by court martial, or by a court of competent jurisdiction, of committing any act of treason against, or of attempting by force to overthrow, or of bearing arms against, the United States.

OATH OF ALLEGIANCE

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation, or purpose of evasion: So help me God.

Subscribed and sworn to before me this 13th day of April, 1946
Ed. M. Bryan
(SEAL OF COURT)

Clerk of the U. S. District Court at Boise, Idaho

AFFIDAVIT OF IDENTIFYING WITNESS By Lone Wanner Deputy.

I, the undersigned, solemnly swear that I am a citizen of the United States; that I reside at the address written below my signature hereto affixed; that I know the applicant who executed the affidavit hereinbefore set forth to be a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further, I solemnly swear that I have known the applicant personally for 38 years.

If witness has been issued a passport, give number if known and date or approximate date of issue.

No. None Date of issue _____

No lawyer or other person will be accepted as witness to a passport application if he has received or expects to receive a fee for his services in connection with the execution of the application or obtaining the passport.

Subscribed and sworn to before me this 13th day of April, 1946

(SEAL OF COURT) Ed. M. Bryan

Clerk of the U.S. District Court at Boise, Idaho

Not related

(Relationship to applicant; if not related, so state)

2211 Pleasanton, Boise, Idaho

(Residence address of witness)

Subscribed and sworn to before me this 13th day of April, 1946

Lone Wanner
(Signature of witness)

NOTE.—If applicant was born outside the United States on or after May 24, 1934, of an alien father and an American mother, a supplemental affidavit will be required giving the name and date and place of birth of mother as well as complete date concerning how and on what date she acquired American citizenship.

EXHIBIT - A - 4

PASSPORT APPLICATION

65722

FORM FOR NATIVE CITIZEN

(Renewal or Issue)

PASSPORT
ISSUED
MAY 2 - 1946
DEPARTMENT OF STATE

UNITED STATES OF AMERICA

STATE OF Idaho

COUNTY OF Ada

Examine and attach PART TWO if members of family are to be included in passport

I, Gilbert Waddell

(Name in full)

do hereby apply to the Department of State, at Washington, for a passport. I solemnly swear that I was born at Emporia Kansas on June 27, 1897

(Town or city)

(Province or territory)

(State or country)

(Date)

I am domiciled in the United States, my permanent residence being at 316 Broadway

Boise

Idaho

(Town or city)

State of

I have resided outside the United States as follows:

(Give name, port, and period of residence in each foreign country)

Territory of Hawaii from Sep. 1942 to March, 1943

(Name of country)

from

to

My father, O. F. Waddell

(Name)

was born at

Kentucky

on Do not know and is now deceased

(The following portion in this block to be filled in only by a person whose father was not born in the United States)

My father emigrated to the United States on or about _____, (Month) _____, 1 _____, (Year) resided _____

years continuously in the United States from 1 _____ to 1 _____, and was naturalized as a citizen of the United States before the _____ Court of _____

at _____ (City) _____ (State) on _____ (Month and day) _____, 1 _____ (Year)

My mother, Henrietta Gilbert Waddell

(Name)

was born at

Kentucky

on Do not know and is now deceased

(The following portion in this block to be filled in only by a person whose mother was not born in the United States)

My mother emigrated to the United States on or about _____, (Month) _____, 1 _____, (Year) resided _____

years continuously in the United States from 1 _____ to 1 _____, and was naturalized as a citizen of the United States by _____

A WOMAN APPLICANT MUST FILL IN THIS PORTION

I was never married.

last married on

Afghanistan

to

who was born at _____ on _____, (Month and day) _____, 1 _____, (Year) is not an American citizen,

and who is now residing at _____

Our marriage has not been terminated.

(was terminated by (death) (divorce) on _____, (Month and day) _____, 1 _____, (Year)

Egypt Iraq Iran

(Date of death or divorce)

My maiden name was _____

(was not previously married)

(was previously married to _____, (Name) _____, (Full name of former husband), _____, (City and State) _____, who was born _____, (Month and day) _____, 1 _____, (Year)

and the marriage was terminated by (death) (divorce) on _____, (Month and day) _____, 1 _____, (Year)

(If married twice, both names, and both dates, to be supplied in duplicate)

My husband _____, (Name) _____, (Full name of husband), _____, (City and State) _____, was naturalized as a citizen of the United States on _____, (Month and day) _____, 1 _____, (Year)

and his father _____, (Name) _____, (Full name of father), _____, (City and State) _____, was naturalized as a citizen of the United States before the _____ Court of _____, (City and State) _____, as shown by the Certificate of Naturalization _____, (Month, day, and year) _____, previously submitted.

THIS IS NOT A TRAVEL PASSPORT

PASSPORT FEE REC'D.

APR 18 1946

To be printed in full by applicant for passport

Maddell Gilbert

I was ^{never married} ~~last married~~ ^{May 10, 1919} ~~and divorced~~

who was born at ⁱⁿ ~~Michigan~~ ^{Mabel Dalby} ~~Michigan~~ ^{Dec 7 1848} ~~Michigan~~ ^{who is} ~~Michigan~~ ^{an American citizen} ~~Michigan~~ ^{and who is now residing at} ~~Michigan~~ ^{4421 8th St. Huntington Beach Calif.} ~~Michigan~~ ^{Our marriage} ~~Michigan~~ ^{was terminated by divorce} ~~Michigan ^{advised on} ~~Michigan ^{Feb. 1946} ~~Michigan ^(date of divorce)~~~~~~

A WOMAN APPLICANT WHO IS OR HAS BEEN MARRIED MUST FILL IN THIS PORTION

My maiden name was _____
I { was not previously married, }
{ was previously married to } _____
on _____ at _____
and _____
(If married more than twice, set forth each in a supplemental statement)
My { husband } _____
{ former husband } _____
and { his father } _____
(date of father's death)
(date of court of _____)
as shown by the Certificate of Naturalization, _____

MY TRAVEL PLANS ARE AS FOLLOWS:

Port of departure *New York City N.Y.*
Approximate date of departure *May 1st 1950.*
Proposed length of stay abroad *2 to 3 weeks*
Means of transportation *Airline*
Countries to be visited *Argentina*
Purpose of trip *Employment*



I solemnly swear that the statements on both sides of this photograph and that the photograph attached hereto is a likeness of me.

I have not been naturalized as a citizen of a foreign state; entered or served in the armed forces of a foreign state; accepted or performed any duties of any office, post or employment under the government of a foreign state or political subdivision thereof; voted in a political election in a foreign state or participated in an election or campaign for the government of a foreign state; made a formal renunciation of nationality before a diplomatic or consular officer of the United States; been convicted by court martial or by a court of competent jurisdiction of the military or naval service of the United States; been convicted by court martial or by a court of competent jurisdiction of any act of treason against, or of attempt to be convicted by force to overthrow, or of bearing arms against the United States.

OATH OF ALLEGIANCE

Further, I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation, or purpose of evasion; so help me God.

Subscribed and sworn to before me this _____ day of _____ 19____

(Seal of Court)

AFFIDAVIT OF IDENTIFYING WITNESS

I, the undersigned, solemnly swear that I am a citizen of the United States; that I reside at the address written below my signature; that I know the applicant who executed the abovesaid naturalization certificate; and that I am a citizen of the United States; that the statements made in the applicant's affidavit are true to the best of my knowledge and belief; further, I solemnly swear that I have known the applicant personally for _____ years.

If witness has been issued a passport, give number if known and date of expiration date of issue.

No. _____ Date of issue _____

No lawyer or other person will be accepted as witness to an affidavit unless he is a citizen of the United States and is in connection with the execution of the application or obtaining the passport.

(Seal of Court)
Subscribed and sworn to before me this _____ day of _____ 19____
(Seal of Court)
For sale by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.
50-10848-5

EXHIBIT A-5

EXHIBIT A-6

APPLICATION FOR AMENDMENT OR EXTENSION OF

PASSPORT
CERTIFICATE OF
IDENTITY AND
REGISTRATION

Continued.

I request that my ^(passport certificate of identity and registration) be—

(a) Extended for ----- months. until May 2, 1950

(b) Amended to exclude my (wife) (husband) -----

CERTIFICATE OF ACTION TAKEN

American Consular Service at Istanbul, Afghanistan

I hereby certify that the above ^(passport certificate of identity and registration) was on May 26th, 1948 (Date)

☐ Amended as requested.

☒ Extended ~~for~~ until May 2, 1950 (Insert length of period)

☐ Referred to the Department for consideration and decision.

Authority -----

(If specially authorized by letter, instruction, or telegram)

Documentary evidence submitted United States passport No. 65722 issued at Washington, D. C. on May 2nd, 1948

(Brief description)

[SEAL]
[NO FEE]

George E. Palmer
George E. Palmer
American Vice Consul
(Signature of American Consul)

INSTRUCTIONS

"In cases where specific authorization by the Department is required, a notation of the action taken, upon the receipt of a reply from the Department, should be transmitted to the Department on a third copy of this form.

U. S. GOVERNMENT PRINTING OFFICE 16-13843-1

XXXXXX

CERTIFICATE OF ACTION TAKEN

I HEREBY CERTIFY that the above passport was on May 26th, 1948 (Date)

renewed for ----- months.

renewed for two years.

referred to the Department for consideration and decision together with a Form 213.

taken up.

[SEAL]

George E. Palmer
George E. Palmer
American Vice Consul
(Signature)

(Title)
George E. Palmer
American Vice Consul

EXHIBIT A-7

FILE

Budget Bureau No. 47-2027.
Approved until changed.

REGISTRATION APPROVED

date June 24, 1947.
expire June 24, 1949
by Consul B.R. Crooks
at Kabul, Afghanistan

APPLICATION FOR REGISTRATION

(For use by persons whose status as a citizen has been approved by the Department of State at Washington)

Certificate of Identity and Registration issued.
Card of Identity and Registration issued.
Date
No.
Expires
Consul
Place

I, Gilbert Waddell, was born at Emporia, Kansas
(State) on 6-27-97; My father, Olus Waddell was born at USA (city unknown)
(Date) (Name) My mother Henrietta Gilbert was born at USA (city unknown)

was naturalized as a citizen of the United States before the _____ Court of _____

on _____; I have resided outside the United States since

Afghanistan, 1946
(Give names of countries and periods of residence in each)

the purpose of _____; my legal residence

in United States is at Boise, Idaho; my occupation is that of

Field Engineer; I intend to return to the United States within

one year to reside permanently. I have not been naturalized as a citizen of a foreign state;

on an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered, or served in, the armed
forces of a foreign state; accepted, or performed the duties of, any office, post, or employment under the government of a foreign state
political subdivision thereof; voted in a political election in a foreign state or participated in an election or plebiscite to determine
sovereignty over foreign territory; made a formal renunciation of nationality before a diplomatic or consular officer of the United
States in a foreign state; been convicted by court martial of deserting the military or naval service of the United States in time of war,
or committing any act of treason against or of attempting by force to overthrow, or of bearing arms against the United States.
If any of the above mentioned acts or conditions are applicable to the applicant's case, a supplementary statement under oath
shall be attached and made a part hereof.

My husband—father—mother was naturalized as a citizen of the United States before the _____

Court of _____

My brother None to whom I was married on _____

wife, _____, was born at _____, OR

He /is not an American citizen.
She (acquired American citizenship by _____

have the following minor children:

an Caroline Las Vegas, Nevada Sept. 10, 1934 Brown School for
(Name) (Date of birth) (Date of birth) Girls, Glendora,
Calif.

I desire my registration to include the following members of my family: None

In the event of death or accident notify:

S. Duncan Willis (sister) Ruth, Nevada
(Name) (Address)

Gilbert Waddell
Gilbert Waddell
Kandahar, Afghanistan
(Address)

document of citizenship submitted: U. S. Passport No. 65722 (Serial No. None)
(To be filled in by Consul)

issued by Department of State, May 2, 1946

Bruce R. Crooks
Bruce R. Crooks, American Vice Consul
Kandahar, Afghanistan June 2, 1947
(Name) (Date)

FEEL (Seal) (Seal)

This document should be transmitted to the Department of State on a third copy of this form.

Issued on May 2, 1946

At Washington.

APPLICATION FOR AMENDMENT OR EXTENSION OF
(To be filled out in duplicate)*

PASSPORT
IDENTITY AND
REGISTRATION

1. Gilbert Waddell
(Name)

request that my (Passport
Certificate of Identity and Registration

territory; or known or assumed to be a deserter of the military or naval service of the United States in time of war or of
state; been convicted by court martial of deserting the military or naval service of the United States in time of war or of
committing any act of treason against or of attempting by force to overthrow, or of bearing arms against the United States.
If any of the above-mentioned acts or conditions are applicable to the applicant's case, or to the case of any other person
included in this application, a supplementary statement under oath should be attached and made a part hereof.



Gilbert Waddell
(Signature of applicant)
Kabul Afghanistan
(Foreign address)

American consular service at

I CERTIFY that the person to whom the above passport was issued
appeared before me in person and signed and swore to the above

application on the No day of _____, 19____

(Signature)

Notes.—To be sworn to at option of Consular Officer. (No fee if sworn to before
Consular Officer.)
Applications may be accepted by mail if they have been sworn to before a local
officer authorized to administer oaths for general purposes. In such a case the
foreign official should fill out, sign, and affix his seal to the form above.

16-12042-1

APPLICATION FOR AMENDMENT OR EXTENSION OF

PASSPORT
IDENTITY AND
REGISTRATION

—Continued.

I request that my (passport
certificate of
identity and
registration) be—

(a) Extended for _____ months— until May 2, 1948.

(b) Amended to exclude my (wife) (husband)

CERTIFICATE OF ACTION TAKEN

American Consular Service at Kabul, Afghanistan

I hereby certify that the above (passport
certificate of
identity and
registration) was on April 20, 1947.
(Date)

☐ Amended as requested.

☒ Extended for _____ until May 2, 1948.

(Insert length of period)

☐ Referred to the Department for consideration and decision.

Authority _____

(If specially authorized by letter, instruction, or telegram)

Documentary evidence submitted Passport.

(Brief description)

Bruce R. Crooks
BRUCE R. CROOKS
(Signature of American Consul)

American Vice Consul.

INSTRUCTIONS

*To make where specified by the Department is required, a notation of the action taken, upon the receipt of a reply from the Department, should be transmitted to the Department on a third copy of this form.

FORM NO. 219
FOREIGN SERVICE
(Established May 1916—Rev. June 1945)

Passport No. 65722

Issued on May 2nd, 1946

At Washington.

APPLICATION FOR AMENDMENT OR EXTENSION OF
(To be filled out in duplicate)*PASSPORT
CERTIFICATE OF
IDENTITY AND
REGISTRATION

I, Gilbert WADDY II, request that my Passport
(Name) Certificate of Identity and Registration

be amended to include my wife, _____, who was born at _____
(Name in full) (Place and State or country)

_____ to whom I was married on _____ at _____
(Date) (Date of marriage) (City, State, or country)

whose photographic likeness is attached.
My wife's maiden name was _____

she ☐ was not previously married.
☐ was previously married on _____
(Important: Date of each previous marriage must be given)

she was formerly married to _____
(Full name of former husband)

_____ at _____
(Date) (City, State, or country)

she was born at _____ and the marriage was terminated by death on _____
(City, State, or country) (Cross out one) (Date)

her present address is _____
(City) (State) (Country)

My wife's last American passport was obtained from _____ on _____
(Insert Washington, or location of office abroad) (Date)

This is submitted herewith for cancellation _____
(Give disposition of passport if it cannot be submitted)

I request that my Passport
Certificate of Identity and Registration be amended to include my minor children, as follows, whose
photographic likeness is attached.

_____, born at _____ on _____
(Name in full) (Place and State or country) (Date)

resided in the United States from _____ to _____

and is now residing at _____

_____, born at _____ on _____
(Name in full) (Place and State or country) (Date)

resided in the United States from _____ to _____

and is now residing at _____

I ☐ have not been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal
declaration of allegiance to a foreign state; entered, or served in, the armed forces of a foreign state; accepted, or performed
duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof; voted
in a political election in a foreign state or participated in an election or plebiscite to determine the sovereignty over foreign
territory; made a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign
state; been convicted by court martial of deserting the military or naval service of the United States in time of war, or of
committing any act of treason against or of attempting by force to overthrow, or of bearing arms against the United States.
If any of the above-mentioned acts or conditions are applicable to the applicant's case, or to the case of any other person
included in this application, a supplementary statement under oath should be attached and made a part hereof.

Gilbert WADDY II

(Signature of applicant)

Kabul, Afghanistan

(Foreign address)

American consular service at Kabul

I CERTIFY that the person to whom the above passport was issued
appeared before me in person and signed and swore to the above

application on the 26th day of May, 1946

George E. Palmer
(Signature)
American Vice Consul
(Title)NOTE.—To be sworn to at option of Consular Officer. (No fee if sworn to before
Consular Officer.)Applications may be accepted by mail if they have been sworn to before a local
officer authorized to administer oaths for general purposes. In such a case the
foreign official should fill out, sign, and affix his seal to the form above.George E. Palmer
American Vice Consul

EXHIBIT A-10

APPLICATION FOR RENEWAL OF PASSPORT

CAUTION.—Extension of expressly limited passports must be applied for on Form 219

In conformity with the rules and regulations prescribed by the President and the Secretary of State pursuant to law, I, the undersigned, hereby apply for a renewal of the period of validity of my passport, the number and date of which appear herein.

RENEWAL SERIES No. 11

Passport No. 65722

Passport Serial No. --

Issued on May 2, 1946 at Washington,
(Date) (Place) D. C.

I, Gilbert Waddell, 1 naturalized American citizen, was never married
(Name) (native) (married on)

(To be filled in by women only)

My husband is a naturalized American citizen
an alien, a citizen of _____
(Name of country)

My legal residence is None
(Street address) (City) (State)

I represent the Morrison-Knudsen Afghanistan, Inc.
(Name of person or organization)

The part in this block is to be filled in by all persons who have acquired citizenship through naturalization.

Since my present passport was issued, I have resided outside the United States at the following places for the periods stated:

_____ from _____ to _____
_____ from _____ to _____
_____ from _____ to _____

The purposes of my visits to the foregoing countries were:

(Give reasons or reasons for stay in each country named)

Gilbert Waddell

(Signature of applicant)

Kabul, Afghanistan

(Foreign address)

I CERTIFY that the person to whom the above passport was issued appeared before me in person and swore to and signed the above application on the 26th day of May, 19 46

Item no. 6
Service no. 95
Fee \$5.00

George E. Palmer
(Signature)
George E. Palmer
American Vice Consul, Kabul
(Title)

American Legation, Kabul,

(Issuing office)

Afghanistan

1-100

(OVER)

George E. Palmer
American Vice Consul

[SEAL]

Waddell

C. L. A. S. E. T.

Office

[Title of Tax Court and Cause.]

MEMORANDUM FINDINGS OF FACT AND OPINION

Held, taxpayer was not, during the taxable year, a bona fide resident of Afghanistan and, accordingly, was not entitled to the exemption from taxation by the United States provided by section 116(a)(1), I.R.C., as amended by the Revenue Act of 1942.

James F. Butler, Esq., for the Petitioner.

John D. Picco, Esq., for the Respondent.

The respondent determined a deficiency of \$2,-362.65 in petitioner's income tax for the year 1947. The only issue here presented is whether petitioner qualifies under section 116(a)(1) so as to exclude from gross income the salary earned by him in the taxable year for personal services rendered in a foreign country.

Findings of Fact

Most of the following facts were stipulated:

Petitioner is an individual citizen of the United States who timely filed his Federal income tax return for the year 1947 with the collector of internal revenue for the district of Idaho at Boise, Idaho.

Petitioner and Mable Waddell, his wife, were married in 1919 and divorced in 1946. As the issue of this marriage, there were born three daughters, all living. At the time of the divorce the two older daughters were and still are married and living with their respective husbands. The younger daughter, Joanne Waddell, was then and still is a minor, whose care and custody were by the divorce decree awarded

to petitioner. The minor daughter resides with her married sister, Mrs. T. A. Burda, at 421 8th Street, Huntington Beach, California. Petitioner provides for and finances her upkeep and schooling. Petitioner has been a single man since the entry of the divorce decree on February 22, 1946.

Petitioner was born in Kansas in 1897, and prior to May 1946 made his residence in Irwin, Idaho. He was, and is, an engineer by occupation, and in 1921 accepted employment as an engineer with the Bureau of Reclamation, U. S. Department of Interior. Petitioner was continuously employed by the Bureau of Reclamation from 1921 until May 3, 1946, when he resigned to accept employment with Morrison-Knudsen Afghanistan, Inc., a Nevada corporation. In his letter of resignation, dated April 19, 1946, petitioner stated that he was resigning "in order to accept private employment with a company engaged in development of irrigation projects in foreign countries." During his employment with the Bureau of Reclamation, petitioner had acquired a Civil Service P-3 rating and such retirement pension rights as provided by the governing laws and regulations.

Petitioner signed a contract of employment with Morrison-Knudsen Afghanistan, Inc., on May 9, 1946. Among other provisions of such contract were the following:

2. Place of Employment

The services of Employee shall be performed in Afghanistan at any one or more of the places therein which may be designated by Employer, or, at Em-

ployer's option, at such other place or places outside said country which Employer may designate in connection with the performance of said construction contract.

* * * * *

4. Period of Employment

The period of services provided for by this Contract shall be twenty-four (24) months at the site of the work after Employee's arrival at such site, provided that in the event Employer's construction contract is completed or terminated before the expiration of said period, this Contract shall thereupon terminate, and Employer shall only be obligated to pay Employee for services rendered to the date of such termination or completion and salary during the return trip to the United States as provided in Paragraph 6 and return travel expenses as provided in Paragraph 8.

* * * * *

6. Date of Commencement of Salary

Salary shall commence four days prior to the date on which Employee has been advised to report at point of leaving the continental limits of the United States enroute to the site of the work. Except as provided in Paragraph 10 herein, salary shall continue for four days after Employee returns to the continental limits of the United States, * * *

* * * * *

8. Return Travel Expense

If Employee completes this contract in accordance with the terms hereof and said contract is not terminated by Employer under the provisions of

Paragraph 10 hereof, he shall be returned from job site to the point of hire at Employer's expense. Employer shall select the mode of transportation. * * *

10. Termination of Contract

If the services of Employee are not satisfactory to Employer or if he is not qualified for the position for which he is hired, or is negligent in his duties, or displays bad temper, or is or becomes addicted to the use of alcoholic drinks or drugs, or is insubordinate, or contracts venereal disease, Employee may be discharged by Employer and this contract shall terminate forthwith. * * *

* * * * *

12. Board and Lodging

Employer agrees to furnish Employee with board and lodging during the term of this contract, or cash allowance in lieu thereof at Employer's option.

* * * * *

14. Withholding from Salary

Employee agrees that Employer shall withhold from the salary of Employee an amount equal to the transportation costs referred to in Paragraph 8. However, not more than one-third of Employee's earnings for any month shall be so withheld. The amount thus withheld shall be refunded to Employee upon completion of this Contract. If Employee quits or is discharged for any of the reasons specified in Paragraph 10 hereof, the amount withheld shall be applied by Employer against the costs which Employer may incur in returning Employee to United States and the balance remaining, if any, shall be refunded to Employee.

15. Income or Other Taxes

Employer will pay and not recharge to Employee income or any other taxes imposed by any country on salary earned by Employee under this Contract, other than taxes imposed by United States of America or any state thereof.

* * * * *

17. Employee to Observe Afghan Laws

The Employee shall respect and obey all Afghan laws, rules and regulations and shall never interfere with the Afghan political or religious affairs either directly or indirectly, and he shall not engage in trade.

* * * * *

The Morrison-Knudsen Co., Inc., is a domestic corporation engaged in the construction business. This company established a foreign division composed of several subsidiary corporations prior to the end of the war for the purpose of contracting for and carrying on construction work in foreign countries. Morrison-Knudsen Afghanistan, Inc., is the subsidiary corporation which operates solely in the Kingdom of Afghanistan.

In 1946 Morrison-Knudsen Afghanistan, Inc. entered into a four-year contract with the Kingdom of Afghanistan whereby said corporation agreed to build certain roads and canals. A second four-year contract was executed by Morrison-Knudsen Afghanistan, Inc. and the Kingdom of Afghanistan in April of 1950, providing for the construction of certain storage dams.

Petitioner arrived in Afghanistan on June 13, 1946, and worked for two years, the period required by his contract. Petitioner left Afghanistan on June 13, 1948, and returned to the United States at company expense, arriving on June 20, 1948. He remained in the United States for the remainder of the year. On January 22, 1949, he signed a second contract of employment with Morrison-Knudsen Afghanistan, Inc. He left the United States on January 27, 1949, and arrived in Afghanistan on February 6, 1949. Petitioner worked until October of 1949, when the company terminated his contract pursuant to paragraph 4 thereof, because of an enforced reduction of personnel due to temporary curtailment of construction funds. Thereupon petitioner returned to the United States, at company expense, arriving on October 28, 1949. Petitioner lived in the United States until approximately May 11, 1950, when he signed a third contract of employment with Morrison-Knudsen Afghanistan, Inc. This contract is substantially similar in its terms to the employment contracts dated May 9, 1946 and January 22, 1949. Petitioner departed for Afghanistan on May 11, 1950, and at the time of the trial of this proceeding was serving the company in Afghanistan pursuant to the contract of employment.

Petitioner's entire income during the calendar year 1947 was earned by him while employed in the Kingdom of Afghanistan, where he was physically present during the whole of that year.

At all times while employed in Afghanistan, peti-

tioner lived in quarters furnished by the company, namely, in a brick building built by the company and maintained for its employees, where he received his board and lodging free of cost. Petitioner was free to obtain outside board and lodging, but he did not, because had he done so he would have had to pay for same out of his own pocket and the board and lodging so purchased would have been inferior. While thus employed in Afghanistan, petitioner maintained no home, residence building or apartment in the United States. Petitioner did not participate in local politics nor did he engage in trade. Petitioner did not pay any taxes to the Afghan authorities, and no tax was ever levied upon him by the Kingdom of Afghanistan, nor did the company pay any taxes on his behalf.

While in the United States from June 20, 1948 to January 22, 1949, petitioner visited friends and took care of his personal affairs at Boise, Idaho, and elsewhere, and stayed at the homes of his married daughters and of his sister in California, Idaho and Nevada. He stayed with them for approximately three and one-half months, and for almost two and one-half months he lived in a rented apartment in Berkeley, California. While in the United States from October 28, 1949 to May 11, 1950, petitioner lived approximately one month at the homes of his married daughters and approximately six months in a rented apartment in Berkeley, California. Petitioner was not under any contractual obligation to the company or any other employer, while in the

United States during the years from 1947* to 1949, inclusive, and received no compensation from any employer for work done in the United States, or elsewhere.

Petitioner applied for a passport on April 13, 1946, prior to his departure for Afghanistan. At that time he stated that he was domiciled in the United States, and that his permanent residence was 316 Broadway, Boise, Idaho, which is the address of the general business offices of Morrison-Knudsen Co., Inc. On June 24, 1947, petitioner went to the American Consulate in Kabul, Afghanistan, and made application for registration. In this application he stated that his legal residence in the United States was Boise, Idaho, and he further stated that "I intend to return to the United States within one year to reside permanently." On May 26, 1948, he applied for an extension of his passport. On April 26, 1950, he applied for a passport, and one was issued on April 27, 1950. At that time he stated that his permanent residence was 421 8th Street, Huntington Beach, California, which is the address of T. A. Burda, petitioner's son-in-law. Petitioner does not own or have any financial interest in 421 8th Street, Huntington Beach, California, and has never resided there except as a guest of his son-in-law and daughter.

Prior to leaving the United States in 1946, peti-

* The year 1947 in the stipulation is obviously in error, as petitioner was in Afghanistan throughout that year.

tioner expressed the thought that, except for vacations, he would be gone from the United States all of his remaining gainful life. His salary abroad was approximately double that which he had ever earned in the United States. During his visits in the United States petitioner expressed himself as expecting to return to Afghanistan as soon as possible.

We make the ultimate finding of fact that petitioner, during the taxable year, was not a bona fide resident of the country of Afghanistan.

Opinion

Van Fossan, Judge: The present case presents a narrow issue, that is, whether respondent erred in his determination that the petitioner was not a bona fide resident of Afghanistan during the taxable year 1947, and, accordingly, was not entitled to exclude from his gross income compensation received by him for personal services performed in a foreign country under favor of section 116(a)(1), as amended by the Revenue Act of 1942.¹

¹Sec. 116. Exclusions from gross income.

In addition to the items specified in section 22 (b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) Earned Income from sources without the United States.—

(1) Foreign resident for entire taxable year.—In the case of an individual citizen of the United States, who establishes to the satisfaction of the Commissioner that he is a bona fide resident of a foreign country or countries during the entire taxable year,

There are almost as many varying shades of definition of the words "residents" and "residence" as there are cases involving the subject. The word "residence" has been characterized as an ambiguous, illusive, flexible or relative term. In some cases it is held to be synonymous with domicile, although generally connoting something quite different. Again, it may be synonymous with "home", or it may not be. One test seems to be generally accepted. When used in a statute it must be interpreted in the light of its context and the purpose and the intent of the framers of the legislation.

A full consideration of the legislative history of section 116(a)(1) will be found in *Arthur J. H. Johnson*, 7 T.C. 1040, and *Downs vs. Commissioner*, 166 Fed. (2d) 504, affirming 7 T.C. 1053; certiorari denied, 334 U.S. 832. We need not repeat that discussion here. These decisions, and others, indicate that there is no single test to be applied in the present instance. Thus the test applied in *Kyle vs. Jones*, 92 Fed. Supp. 600, that mere physical presence of a taxpayer in a foreign country for the full year ripens the right to exemption is too simple and is out of line with better reasoned opinions interpreting the statute, as amended in the 1942 Revenue Act. Each

amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income as defined in paragraph (3); but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this subsection.

case must rest on its own facts and no single fact is determinative.

Weighing all the facts carefully and having studied the several cases on the subject, we believe the record here requires our ultimate finding of fact that petitioner was not, during the taxable year, a bona fide resident of Afghanistan and, therefore, was not entitled to the exemption from taxation in the United States of compensation received in a foreign country. See Arthur J. H. Johnson, *supra*; *Downs vs. Commissioner*, *supra*.

Decision will be entered for the respondent.

Entered April 11, 1951.

Received T.C.U.S. April 9, 1951 .

The Tax Court of the United States
Washington

Docket No. 24483

GILBERT WADDELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered April 11, 1951, it is

Ordered and Decided: That there is a deficiency in income tax of \$2,362.65 for the year 1947.

[Seal] /s/ ERNEST H. VAN FOSSAN,
Judge.

Entered April 11, 1951.

Served April 13, 1951.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 24483

GILBERT WADDELL,

Petitioner-Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

PETITION FOR REVIEW

To the Honorable the Judges of the United States
Court of Appeals for the Ninth Circuit:

The petitioner in support of this his petition filed pursuant to the provisions of section 1001 of the act of Congress approved February 26, 1926, entitled "The revenue act of 1926" and the acts amendatory thereof and supplemental thereto, for the review of the decision of The Tax Court of the United States, rendered April 11, 1951, approving a deficiency in income tax of the petitioner for the calendar year 1947 in the amount of \$2,362.65, respectively shows to this honorable court:

I.

That the nature of the controversy is as follows:

(A) That section 116 of the Internal Revenue Code, (being Title 26, sec. 116, U.S.C.A.), in so-far-as it pertains to this cause, is as follows:

Section 116. Exclusions from Gross Income.

In addition to the items specified in section 22(b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) Earned income from sources without the United States.

(1) Foreign resident for entire taxable year. In the case of an individual citizen of the United States, who establishes to the satisfaction of the Commissioner that he is a bona fide resident of a foreign country or countries during the entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income as defined in paragraph (3); * * *

(2) * * *

(3) Definition of earned income. For the purposes of this sub-section, "earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered, * * *

(B) That on file, as part of the record in this cause, is the stipulation made by and between the respective parties to this litigation, in which the facts upon which this case was tried were agreed upon, except as to the ultimate question as to whether the petitioner, Gilbert Waddell, was a bona fide resident of a foreign country or countries during the entire taxable year 1947. As to that question, petitioner introduced oral testimony at the hearing before the

Tax Court of the United States, said testimony being, also, a part of the record in this cause.

(C) That the said stipulation covers many factual points, but, in brief, sets forth that:

(1) The petitioner, Gilbert Waddell, was at all times herein mentioned an individual citizen of the United States;

(2) That he was physically present in the Kingdom of Afghanistan, a foreign country, during the entire year 1947;

(3) That his income in that year was composed of amounts received from a source without the United States, to-wit: from Morrison-Knudsen Afghanistan, Inc., a corporation operating solely within the Kingdom of Afghanistan; and

(4) That the amounts so received constituted earned income, as defined in section 116(a)(3) of the Internal Revenue Code (hereinabove set forth), being salary earned by petitioner for services performed by him in the Kingdom of Afghanistan;

(D) That the facts so stipulated were found by and incorporated in the opinion of the court below;

(E) That, at the hearing of this cause before the court below, petitioner presented oral testimony tending to show his intent to establish residence in Afghanistan and that he had entertained such an intent at all times since prior to his departure from the United States, going to Afghanistan, in the year 1946; that the court below found as a fact that peti-

tioner had made the statements relied upon by petitioner to establish his intent in that regard, but made no specific finding as to petitioner's intent, or want of intent, to establish and maintain a residence in Afghanistan, during the year 1947.

(F) The cause was heard at Portland, Oregon, before the Honorable Ernest H. Van Fossan, Judge of the Tax Court of the United States, on October 26, 1950, and thereafter and on the 11th day of April, 1951, he entered in said court and cause his Findings of Fact and Opinion, in which it was found as an ultimate fact that petitioner, during the taxable year 1947, was not a bona fide resident of the country of Afghanistan; and, as a matter of law, that petitioner was not entitled to the exemption from taxation provided by section 116(a) of the Internal Revenue Code. On the same date the Order and Decision of the court was entered in favor of the respondent herein for a deficiency in petitioner's tax for the year 1947 in the sum of \$2,362.65.

II.

That petitioner is a citizen of the United States of America and of the State of Idaho, and being aggrieved by the said findings of fact, opinion, order and decision, seeks a review thereof in accordance with the provisions of the revenue act of 1926, and the acts amendatory thereof and supplemental thereto, by the United States Circuit Court of Appeals for the Ninth Circuit, within which circuit is located the office of the Collector of Internal Revenue for

the Idaho collection district, with whom petitioner made and filed his return of income.

III.

The petitioner, as a basis for review, makes the following assignment of error:

That the Tax Court of the United States erred in finding that Gilbert Waddell, petitioner herein, was not a bona fide resident of the Kingdom of Afghanistan, a foreign country, during the entire year 1949, and in its decision, based thereon, that said petitioner's income tax return for that year disclosed a deficiency.

Wherefore your petitioner prays that this honorable court may review such findings, opinion, order and decision and reverse and set aside the same, and that the clerk of the Tax Court of the United States be directed to transmit and deliver to the clerk of this court certified copies of each and every of the documents necessary and material to the presentation and consideration of the foregoing petition for review, and as required by the rules of this court and the statutes made and provided.

/s/ JAMES F. BUTLER,
Attorney for Petitioner.

Duly Verified.

Received and Filed T.C.U.S. July 9, 1951.

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF APPEAL

To Charles Oliphant, General Counsel, Bureau of
Internal Revenue, Washington, D. C., Attorney
for Respondent-Appellee:

Notice is hereby given that Gilbert Waddell, Petitioner-Appellant above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the decision of the Tax Court of the United States made and entered in the above entitled cause on April 11, 1951.

/s/ JAMES F. BUTLER,
Attorney for Petitioner-
Appellant.

Acknowledgment of Service attached.

Filed T.C.U.S. July 11, 1951.

The Tax Court of the United States
Washington

[Title of Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 22, inclusive, constitute and are all of the original papers and proceedings, including Exhibits 1-A to 4-D, inclusive, attached to the stipulation of facts and Respondent's Exhibit "E" admitted in evidence, on file in my office as the original and complete record in the proceeding before The

Tax Court of the United States in the above entitled proceeding and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 27th day of July, 1951.

[Seal] /s/ VICTOR S. MERSCH,
 Clerk, The Tax Court of the
 United States.

The Tax Court of the United States

Docket No. 24483

GILBERT WADDELL,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

United States Courthouse, Portland, Oregon

Thursday, October 26, 1950

Met, pursuant to notice, at 9:40 a.m.

Before: Hon. Ernest H. Van Fossan, Judge.

Appearances:

James F. Butler, appearing for Petitioner.

John D. Picco, appearing for Respondent. [2*]

PROCEEDINGS

The Clerk: Docket No. 24483—Gilbert Waddell.

Mr. Picco: John D. Picco, for the Respondent,
ready.Mr. Butler: James F. Butler, for the Petitioner.
Ready, your Honor.The Court: Mr. Butler, will you state the issues in
this matter.Mr. Butler: If the Court please, this is a very
simple case. The Petitioner, Gilbert Waddell, went
to Afghanistan in 1946 to serve as an engineer on a
construction project in that country. The construc-

* Page numbering appearing at top of page of original certified
Reporter's Transcript.

tion project contemplates the construction of a series of earth dams, canals, ditches and laterals on a high plateau, and foreseeably that construction job will extend for many years in the future. He was employed under employment contract, a printed form, and that printed form is uniform in all cases in that it provides, among other things, for employment for twenty-four months. It has provisions in it. This employment contract will be in evidence.

The employment contract provides that at the end of the twenty-four months period he shall be shipped home at Company expense and provided vacation on pay, depending upon the length of his service and for a great many other things. [3]

Mr. Waddell served his full two years and came home on vacation and stayed for a matter of six months, two of which were on paid vacation the other four months being at his own expense, during which period he didn't work for anyone else. He then renewed his employment contract and went back to Afghanistan in January of 1949. At that time he stayed ten months and although this second contract provided for twenty-four months employment he actually worked only ten months, at which time his employer ran out of money—that is the appropriation from the King of Afghanistan ran out—and so his employment was terminated until more money could be made available.

He returned home and waited approximately another six months and at that time a new contract was negotiated with the King of Afghanistan and his employer, so along in the early part of May of this year

he signed a new twenty-four months employment contract and is back in Afghanistan, where he expects to continue and to be forced to be present for at least another five years before he can come home on another vacation.

All the facts in this matter with the exception of the intent of the petitioner have been reduced to written stipulation and will be introduced here. The facts in that stipulation, of course, are a little bare, as is necessary in a written stipulation of that sort. The facts, however, do [4] show that Mr. Waddell was in Afghanistan, visibly present, during the entire year 1947, which is the year in controversy, and all his income in that year was the result of his earnings in Afghanistan; that he filed an Income Tax Return with the Collector for the District of Idaho covering his earnings for the year 1947 in which he reported his earnings and claiming as exempt under Section 116-A of the Revenue Code on the ground that he was a bona fide resident of Afghanistan and that his earnings were exempt as being earned by him in Afghanistan.

Subsequently his position in that respect has been denied and tax assessed on the basis that he did not qualify as a person who is entitled to take that exemption.

The only matter of testimony which we shall introduce in this court this morning will be evidence tending to establish the intent of the Petitioner as regards his foreign employment and his career in foreign construction work. It is our position, of course, that under the rulings of various Circuit Courts of Ap-

peal and of the Tax Court that the physical presence of a taxpayer in a foreign country during the entire year, and the fact that he is living there and making his living there, is about all that should have to be proved in order to establish the taxpayer's right to the exemption provided in the statute.

Just to be on the safe side, and because there is [5] some confusion in the minds of a great many people as to just what residence as required by the statute entails, we have thought that it perhaps was necessary to go into the matter of the Petitioner's intent from the very inception and prior to the time that he signed this contract and first left for Afghanistan in 1946.

There is a great deal more that could be said at this time. I'd like to say that it's an interesting story. I think perhaps in view of other matters we should proceed to an examination of the only witness present.

Mr. Waddell, the Petitioner, is, as I say, in Afghanistan and will be unable to be here to testify in his own behalf.

I think that outlines the facts as they are known, roughly and briefly, and we will proceed.

The Court: Mr. Picco, you may state the Government's position.

Mr. Picco: The counsel for Petitioner has roughly outlined the facts, your Honor. The issue here is whether the Petitioner, under the evidence, establishes bona fide residence in Afghanistan in the year 1947. I just want to point out one or two circumstances that are in the stipulation of facts that haven't been pointed out by counsel. One, of course,

that he did not pay any taxes to the foreign country; that he did not engage in trade or politics, and [6] that was contrary to his contract; that he was quartered in the building maintained by the Company for the employees and received his board and lodging free, at cost. He did have the privilege of going outside if he desired but he would have to pay that out of his own pocket.

But the one fact that I would like to stress is the document, Exhibit A, attached to the stipulation, which are passport applications and documents of the State Department, which shows that in June of 1947, which was the tax year, Mr. Waddell, the Petitioner, applied to the American Vice Counsel at Kabul where he applied for registration as a United States citizen in a foreign country, and in that application he stated that he intended to return to the United States within one year, which he did do, to reside permanently. We feel that that's one evidence of the state of his mind, particularly in the year 1947 which is in issue.

That will be all your Honor. If agreeable to you we would like to enter the stipulation of facts which has been signed.

The Court: The stipulation may be submitted. How many exhibits are attached?

Mr. Picco: There are four exhibits attached, Exhibits 1, 2, 3 and Exhibit A.

The Court: These are not numbered or lettered in accordance with the rules. The rules provide that exhibits [7] attached to stipulation should be lettered 1-A, 2-B, 3-C, and so forth.

Mr. Picco: I'm sorry. We were under the impression the exhibits that he presented would have the usual number, 1, 2, 3, and the exhibits that we presented——

The Court: When they are made joint exhibits they cease to be individual exhibits.

Mr. Picco: I'm sorry. Will you accept these as they are, Your Honor?

The Court: Yes. It will be received.

Mr. Picco: Thank you.

Mr. Butler: Your Honor, I wonder if it would help if we stipulate here orally that the Exhibits attached to the stipulation may be renumbered to correspond with the rules of the court?

The Court: That might as well be done.

Mr. Butler: And stipulate further that they are the joint exhibits of the Petitioner and the Respondent.

The Court: You may do that.

(Joint Exhibits 1-A, 2-B, 3-C and 4-D, attached to stipulation, received in evidence.)

[Printer's Note: Joint Exhibits 1-A, 2-B, and 4-D are set out in full at pages 24-52 of this printed record.]

Mr. Picco: If agreeable to the Court, Respondent would like to introduce into evidence Respondent's Exhibit B, which is the Individual Income Tax Return of taxpayer. [8]

The Court: If these Exhibits are renumbered four of them will take 1-A through 4-D. Your next Exhibit will be E.

Mr. Picco: Respondent's Exhibit E?

The Court: Yes.

Mr. Picco: Thank you.

The Court: There is no objection to this, Mr. Butler?

Mr. Butler: No, Your Honor, I have no objection.

Mr. Picco: According to the stipulation it's agreeable with counsel.

The Clerk: What year is that?

Mr. Picco: That's '47.

The Court: It will be received in evidence.

(Respondent's Exhibit E received in evidence.)

EXHIBIT E-1

File this return with Collector of Internal Revenue on or before Mar. 15, 1948. Any balance of tax due (Item 9, below) must be paid in full with return. See separate instructions for filling out return.

FORM 1040
Individual Income Tax Return
Department of the Treasury
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

FOR CALENDAR YEAR 1947

1947

or fiscal year beginning _____, 1947, and ending _____, 1948

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than \$100 of other wages, dividends, and interest.

Do not write in these spaces

File
Cable
No. 8153113

Cashier's Stamp

Name Gilbert Waddell

(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS of Morrison-Knudsen Afghanistan

(PLEASE PRINT. Address and number of rural route)

Kabul Afghanistan

(City or town, postal zone number)

(Country)

(State)

Occupation Engineer Social Security No. 519-20-7340

List your own name.

If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in Instruction 1) with 1947 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

1.	Name (please print)	Relationship
Yourself	<u>Gilbert Waddell</u>	
	<u>Joanne Waddell</u>	<u>Daughter</u>

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1947, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues,

insurance, bonds, etc. Members of armed forces and persons traveling

2.	Employer's Name	Where Employed (City and State)	Amount
	<u>Morrison-Knudsen Afghanistan Inc.</u>	<u>Kabul, Afghanistan</u>	

No taxable income under section 116-A of the Internal Revenue Code for the year of 1947 → \$ 11,450.00

3. Enter here the total amount of your dividends.	<u>2.20</u>
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation)	
5. If you received any other income, give details on page 2, and enter the total here.	
6. Add amounts in items 2, 3, 4, and 5, and enter the total here.	

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 2. You may either take a standard deduction of \$1,000 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

7. Enter your tax from table on page 4, or from line 12, page 3.	\$ 236.21
8. How much have you paid on your 1947 income tax? (A) By withholding from your wages (B) By payments on 1947 Declaration of Estimated Tax.	\$
9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here.	\$ 236.21
10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here.	\$

Check (✓) whether you want this overpayment: Refunded to you ☐; or Credited on your 1948 estimated tax ☐

If you filed a return for a prior year, what was the latest year? 1945
Which Collector's office was it sent? Boise, Idaho
Which Collector's office did you pay amount claimed in item 8 (B), above?

If your wife (or husband) making a separate return for 1947? ☐ "Yes" or "No"
If "Yes," write below:
Name of wife (or husband)
Collector's office to which sent

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Signature of person (other than taxpayer) or agent preparing return (Date) Gilbert Waddell 3/14/48

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

10-40000

Edmund S. Suddell
c/o Harrison-Brown Afghanistan
Kabul, Afghanistan

EXHIBIT
E-2

Dear Mr. Suddell:

We acknowledge receipt of your 1947 income tax return, wherein you claim that your earnings are exempt, under Section 116-A of the Internal Revenue Code.

You are advised that from the information that we can obtain, you are under contract employment with the Harrison-Brown Afghanistan Incorporated, that your residence is only temporary and that you will return to the United States.

Kindly furnish this office with the extent of your earnings for the entire year and also a complete statement of your contract of employment. If there is any doubt as to whether or not your income is taxable, we will submit your problem to the Commissioner of Internal Revenue for a ruling.

Several cases of persons working for the Harrison-Brown Company have already been ruled on, and in each case it was ruled that their incomes were taxable. It is very difficult for a citizen of the United States taking temporary employment outside of the United States to qualify under Section 116 of the Internal Revenue Code.

Please give this matter your immediate attention. Attach the enclosed copy of this letter for identification purposes, as we are holding your return in our suspense file.

Very truly yours,

JOHN K. V. BLANK, COLLECTOR

By

Myron E. Anderson, Chief
Income Tax Division

TOTAL DEDUCTIONS

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

Amount shown in item 6, page 1. This is your Adjusted Gross Income.....
DEDUCTIONS (If deductions are itemized above, enter the total of each deduction; if adjusted gross income (line 1) is \$1,000 or more and deductions are not itemized, enter the standard deduction of \$500).....
line 2 from line 1. Enter the difference here. This is your Net Income.....
or exemptions (\$500 for each person whose name is listed in item 1, page 1).....
line 4 from line 3. Enter the difference here.....
tax rates in instruction sheet to figure your combined tentative normal tax and surtax on amount entered on
Enter the tentative tax here. (If line 3, above, includes partially tax-exempt interest, see Tax Computation
sheet.).....
line 5 from line 4. Enter the difference here.....
line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax. (If alternative tax
election is made on separate Schedule D, enter here tax from line 12 of Schedule D).....

11050 00
500 00
10550 00
1000 00
9550 00
2780 00
124 35
2362 65

IF YOU USED THE NEW STANDARD DEDUCTION IN LINE 2, INCREASED LINES 5, 10, AND 11, AND COPY ON LINE 11
THE SAME FIGURE YOU ENTERED ON LINE 5

any income tax payments to a foreign country or U. S. possession (attach Form 1134).....

any income tax paid at source on tax-free government bond interest.....

figures on lines 9 and 10 and enter the total here.....

line 11 from line 8. Enter the difference here and in item 7, page 1. This is your tax.....

2362 65

EXHIBIT E3

Kabul, Afghanistan
14 March 1948

Collector of Internal Revenue
Boise, Idaho

Dear Sir:

During the whole of the calendar year 1947
I have been a resident of Afghanistan and have earned no
income within the United States.

Therefore, under Section 116-A of the Internal
Revenue Code, I have no taxable income.

Yours very truly,

Gilbert Waddell
Gilbert Waddell

CW:jlg

3

82
RECEIVED
MAR 26 1948
COLL. INT. REV.
DIST. IDAHO

EXHIBIT E-4

File this return with Collector of Internal Revenue on or before March 15, 1948. Any balance of tax due (item 9, below) must be paid in full with return. See separate instructions for filling out return.

Page 1

FORM 1040
U. S. Department
of Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN

FOR CALENDAR YEAR 1947

1947

or fiscal year beginning _____, 1947, and ending _____, 1948

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return, if your total income was less than \$5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than \$100 of other wages, dividends, and interest.

Do not write in these spaces

File

Code

Serial

No.

District

(Cashier's Stamp)

Name Gilbert Waddell

(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS

Morrison-Kaudsen Afghanistan

(PLEASE PRINT. Street and number or rural route)

Afghanistan Kabul

(City or town, postal zone number)

(Country)

(State)

Occupation EngineerSocial Security No. 519-20-7340

List your own name.

If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

1.	Name (please print)	Relationship	Name (please print)	Relationship
	<u>Gilbert Waddell</u>	<u>XXXXXXXXXX</u>	<u>Jeanne Waddell</u>	<u>Daughter</u>

* Note - Divorced wife alimony payment \$1200.00 per year

* Natal Waddell divorced wife

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1947, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

2.	Print Employer's Name	Where Employed (City and State)	Amount
	<u>Morrison-Kaudsen</u>	<u>Afghanistan Inc. Kabul, Afghanistan</u>	<u>\$</u>

3. Enter here the total amount of your dividends _____

4. Enter here the total amount of your interest (including interest from U.S. government obligations, unless wholly exempt from taxation) _____

5. If you received any other income, give details on page 2 and enter the total here _____

6. Add amounts in items 2, 3, 4, and 5, and enter the total here \$11,050.00

IF YOUR INCOME WAS LESS THAN \$5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 1.

IF YOUR INCOME WAS \$5,000 OR MORE.—Disregard the tax table and compute your tax on page 1. You may either take a standard deduction of \$500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

7. Enter your tax from table on page 4, or from line 12, page 3 _____

8. How much have you paid on your 1947 income tax?
(A) By withholding from your wages _____
(B) By payments on 1947 Declaration of Estimated Tax _____

9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here _____

10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here _____

Check (x) whether you want this overpayment: refunded to you ☐ or credited on your 1948 estimated tax ☐

a return for a prior year, what was the latest year? 1945
Collector's office was it sent? Boise, Idaho
Collector's office did you pay claimed in item 8 (B), above?

Is your wife (or husband) making a separate return for 1947? Yes
If "Yes," write below:
Name of wife (or husband) _____

Collector's office to which sent Not Known

are under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Name of person (other than taxpayer or agent) preparing return _____ (Date) _____

(Signature of taxpayer)

(Date)

(Name of firm or employer, if any)

(If this is a joint return of husband and wife, it must be signed by both)

11-5000-1

EXHIBIT E S

To: Gilbert Waddell
 Whom: c/o Morrison-Knudsen Co.
 Paid: Boise, Idaho

519-20-7340

1947

UNITED STATES INFORMATION RETURN FOR CALENDAR YEAR 1947

THIS FORM IS FOR EMPLOYERS
 to file if they have paid or
 accumulated any income tax
 on behalf of an employee. This
 form is required with the
 wage payments report
 Form W-2a.

File with return Form 1096
 with the Commissioner of
 Revenue, in care of Processing
 Division, Kansas City,
 Missouri 64108.

Do not file as item with the
 return, but forward to
 the above address a report
 showing to what has in pre-
 vious year been returned.

KIND AND AMOUNT OF INCOME PAID

WAGES, SALARIES, FEES, COMMISSIONS, AND BONUSES	RENTS AND ROYALTIES	OTHER FIXED OR DETERMINABLE INCOME	FOREIGN INCOME (If over \$100 or more)	TOTAL INCOME (Total paid, including amounts estimated nonassessable)
Enter in each column the aggregate amount of above income				
\$ 11,050.00	\$	\$	\$	\$

MORRISON-KNUDSEN AFGHANISTAN, INC.
 1860 BROADWAY
 NEW YORK 23, N. Y.

16-50717-1

[over]

XXXXXX

GILBERT WADDELL
 C/O MORRISON-KNUDSEN AFGHANISTAN
 KABUL AFGHANISTAN

7340

8153113-11

1947

COPY

IDAHO 1947

90-4-48

3-4-48

450-48 line
 find more 5/1/48

Mr. Picco: Respondent requests the privilege of withdrawing these Exhibits and substituting photo-static copies.

The Court: That may be done. Proceed with the evidence.

Mr. Butler: Mrs. Burda, will you come forward, please. [9]

HELENE BURDA

was called as a witness on behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination:

The Clerk: Will you state your name for the record, please?

The Witness: Helene Burda.

Q. (By Mr. Butler): Mrs. Burda, are you related to the Petitioner, Gilbert Waddell?

A. Yes, I'm his daughter.

Q. Is your mother living?

A. Yes, she's living.

Q. Is she still married to your father?

A. No, they were divorced in February of '46.

Q. February 1946. And with respect to the time your father first went to Afghanistan this divorce preceded that by several months?

A. That's right.

Q. Your father ever since that divorce has been and still is a single and unmarried man?

A. Yes, he is.

Q. Now with respect to the rest of the family, are you the oldest daughter? [10]

(Testimony of Helene Burda.)

A. I am.

Q. And you are married? A. Yes.

Q. And where do you reside?

A. At 421 Eighth Street, Huntington Beach, California.

Q. You reside there with your husband and children? A. Yes.

Q. And you have another sister, what's her name?

A. Geraldine Sergeson, and she lives in Kennett Square, Pennsylvania.

Q. She is married? A. Yes.

Q. Resides there with her husband?

A. Yes.

Q. Now there is a third sister?

A. Yes, I have a small sister. She's sixteen and she lives with me most of the time. I take care of her financial and education and everything like that. She stays with me.

Q. And the costs of her care and education is borne by whom?

A. My father has a bank account for me for her.

Q. And that's all the members of the family?

A. Yes.

Q. Your father has the custody and care of Joan? A. Yes. [11]

Q. Under the divorce decree?

A. That's right.

Q. And your father also supports your mother through monthly alimony payments?

A. Yes.

(Testimony of Helene Burda.)

Q. Now, your father is an engineer by profession?

A. Yes, he's an expert on earth-filled dams. He has worked on them for some twenty-five years.

Q. And before his employment with Morrison-Knudsen-Afghanistan, Inc., by whom was he employed?

A. Well, he was employed by the United States Bureau of Reclamation for about twenty-five years.

Q. And his work was principally specialized in construction of earth dams? A. Yes.

Q. Now, directing your attention to the year 1946, and the period just before your father left for Afghanistan, this being after the divorce, did you have occasion to see your father personally?

A. Yes. He had found out that he was going to Afghanistan and my husband and myself and my sister and her husband and my younger sister all—we were all up in Irwin, Idaho. My husband and I made a special trip up there to say good-bye to my father since he was going to be gone for some time. [12]

Q. Now, at that time it was necessary for your father to make arrangements for Joan's support and care during his absence; is that not true?

A. Yes.

Q. And with whom did he make those arrangements?

A. Well, he talked it over with me and since I was the oldest and was in a position to take care of her I assumed that responsibility.

(Testimony of Helene Burda.)

Q. In connection with his remarks to you about taking care of her did he make any statements to you as to how long he intended to be gone to Afghanistan?

A. Well, this is a rather mammoth project over there and he felt that there was enough work over there to keep him busy for the rest of his professional life.

Q. He made such a statement to you, did he?

A. Well, he said he would have vacations from time to time but that inasmuch as he could make the kind of money that he wanted over there, and could make it in a short period of time, that he felt it was worth it to give up his Bureau of Reclamation job and take something a little more lucrative and get it all over with in approximately ten years, he said. Then there was——

Q. Now, quite aside from the fact that the project was large, and would take a good many years as far as his information was concerned, did he give you to understand that he did intend to stay over there; that is, of course, excepting his vacation, but that he intended to work on that kind of work, and in Afghanistan, for the rest of his professional career?

A. Yes. There was not only that project, there were several others that he could have been transferred to. There was Ceylon and so many of them. He was quite excited about it because, oh, I guess the adventure of the whole thing, or something, but

(Testimony of Helene Burda.)

there are so many foreign projects and he was quite anxious to get into that type of work.

Q. Now did he discuss with you the differences that this kind of work would make in his income?

A. Yes. He was held back in the Bureau because of lack of education and he never could advance to the point where he should have, so he felt that this kind of work would net him what he should get out of his professional life.

Q. With respect to his financial burdens at that time, just what was the situation?

A. Well, I don't really know his salary but he paid my mother a good deal of alimony and my smaller sister was getting to the point where he had to figure on education, college and one thing and another, and keeping up two establishments and trying to put a little school money away and things like that, he just couldn't make it on his present salary. I think that was a big factor in his deciding to [14] take up that type of work.

Q. And did he inform you that his income with Morrison-Knudsen-Afghanistan, Inc., would be substantially larger than his income with the Bureau?

A. Oh, yes, it was at least double. As I say, I don't know the exact figures but it was a good deal more.

Q. Well, let's see, your father left originally for Afghanistan sometime in the month of June, 1946?

A. That's right.

Q. And when did you next see him?

(Testimony of Helene Burda.)

A. Well, he came back in June of '48 after two years over there.

Q. And at that time did he discuss with you his further plans?

A. Well, I believe he expected to go back sooner than he did but he had some dental work and some medical work and took a big long vacation. I don't know, it was pending some sort of arrangement on his work but he really didn't expect to spend as long as he did. However, it was a nice vacation.

Q. He stayed here about six months on that occasion? A. Yes, about six months.

Q. And how long after he first got home and you talked to him was it before he started to talk to you about his further plans?

A. Well, he hadn't been in the house twenty-four hours [15] until he told us he was going right back. As I say, he anticipated to go back sooner and he thought his vacation would be cut just a little bit short. He knew the day he got back that he was returning.

Q. That he was returning to Afghanistan?

A. That's right.

Q. And so then he did go back about when?

A. I think it was January of '49.

Q. And when did you next see him?

A. It was ten months. It was a two-year contract like the other but they ran out of funds and he returned in ten months.

Q. That puts it you saw him then along sometime the latter part of October or November of 1949? A. That's right.

(Testimony of Helene Burda.)

Q. And at that time did he make any statements to you relative to his intention to return to Afghanistan?

A. Well, he was just biding his time until they got some more money and could send him back over again.

Q. He made that statement to you that that was his intent?

A. That's right. He didn't know how long it would be but he just had to sit around and wait until they were ready to send him back.

Q. And then your father left, he did actually leave [16] and return to Afghanistan?

A. The first part of May.

Q. Of which year? A. 1950.

Q. And he is there now?

A. Yes, and this time I think he anticipates a four or five year job without taking his vacations or anything. It seems sort of a long ways back and forth and unless something should come up I think he'll just remain there for at least five years more—unless they run out of money again or something unforeseen.

Q. He made the statement to you that that was his intention, before he left? A. Yes.

Q. Now, during all this period since 1946 when your father left has he owned or rented or otherwise maintained any residence, building or apartment or hotel room or other place that you might call a home or a residence for him in this country?

A. Not that I know of. His mailing address was

(Testimony of Helene Burda.)

my home because we take care of his insurance premiums and things like that.

Q. Now, let's see, you say his mailing address is your home? A. Yes. [17]

Q. What is your residence address?

A. 421 Eighth Street, Huntington Beach, California.

Q. With respect to your residence at 421 Eighth Street, in Huntington Beach, does your father have any financial interest in that residence?

A. No, he doesn't.

Q. Whose property is that?

A. It belongs to my husband and I.

Q. During the periods when your father was in this country first during the latter part of 1948 and beginning in the winter months of 1949 and the early part of 1950, do you know whether your father worked for anyone in this country?

A. No, he didn't work, he just went around visiting old friends and more or less just having a vacation.

Mr. Butler: I think that will be all.

The Court: You may cross-examine.

Cross Examination

Q. (By Mr. Picco): Mrs. Burda, did you get many letters from Mr. Waddell in 1947, at the time he was in Afghanistan?

A. Yes, the usual amount.

Q. Did he tell you anything about the country in those letters?

A. Well, he tried to make his letters interesting

(Testimony of Helene Burda.)

and tell us about the natives and one thing or another. He [18] usually mentioned his work one way or another, how it was going, if it was going well or otherwise.

Q. Did he say he liked the country?

A. Well, he liked that type of work. He was very very fond of his career. I don't know whether he was actually in love with the country but he does like his work.

Q. Did he ever mention to you in those letters of 1947 that he was homesick for the United States?

A. Well, he was homesick for his family. My little sister especially. They were very close.

Q. Did he express complete satisfaction with his working conditions over there?

A. Well, as far as I know he was perfectly satisfied.

Q. I'm asking whether in his letters he made statements?

A. Well, I really couldn't say. It's been several years. I can't remember everything he said in his letters but I know in general it was satisfactory to him.

Q. Did he say in his letters during 1947 that he had changed his mind about his plans for employment in Afghanistan?

A. Well, no, he couldn't very well change his mind because his intention was to get enough money made in ten years——

Q. Did he make that statement, Mrs. Burda?

A. No, not that I know of. [19]

(Testimony of Helene Burda.)

Q. In Exhibit A attached to the stipulation here there is an application for registration which shows that in June of 1947 Mr. Waddell went to the American Vice-Consul at Kabul and in his application he stated that he was going to return to the United States within one year and he intended to reside in the United States permanently at that time. Now in view of that, did the letters you received during this time, 1947, from Mr. Waddell, reflect that state of mind?

A. Well, no. He had no place to reside. He didn't have enough money to buy a home or a ranch or anything by that time, and there was no place else for him to live. He never has had a residence in the United States since he went over there.

Q. Well, he could have gotten a residence in the United States easily enough, couldn't he?

A. Well, he would have had to find some type of employment, and Morrison-Knudsen did not employ him in the United States.

Q. Now Mr. Waddell returned to the United States sometime in June of 1946 after his two-year contract expired; is that correct? A. '48.

Q. '48. I'm sorry. He was down on vacation you say?

A. Yes, he was all over on a vacation.

Q. You stated on your direct examination that he was [20] on vacation for six months; is that right?

A. Well, he was waiting for another contract and naturally he vacationed while he was waiting.

Q. Was he certain of getting another contract?

(Testimony of Helene Burda.)

A. Well, with all that work in view, and everything had been satisfactory. He had no reason to believe that he wouldn't get another contract.

Q. He waited for six months, did he not, for the second contract?

A. Yes, but he had a little health problem. He had a good deal of medical work and some dental work and things like that to look into, and he vacationed for about three months and then went to work on himself.

Q. Actually he had two months vacation with pay under his contract; is that correct?

A. I believe that's what the contract says. I don't really know too much about their contract.

Q. Where did he stay during this six months after he got back in 1948?

A. Well, first he went to Irwin, Idaho. And then he went down to San Francisco. Then he came down to Huntington Beach. Then he went up to Ruth, Nevada. Then he went to Yellowstone Park. He was just all over. He saw everyone that he ever knew, I believe. He just spent all that time traveling back and forth to see people. [21]

Q. You say there was something wrong with his health during this period of six months?

A. Well, he had a doctor in Boise that had operated on him some years back. I wouldn't say what year it was because I can't recall; but he had a good deal of dental work done in Huntington Beach by my dentist and then he had some more work done in Boise by a dentist. He had some sort of an im-

(Testimony of Helene Burda.)

pacted tooth, or something. I can't recall what it was but it was a regular operation. I know he suffered a good deal with it.

Q. I understand he went back after signing a second contract for two years sometime in January, 1949?

A. That's right.

Q. Now, he didn't work two years on that contract, did he?

A. No, they ran out of money and he was—consequently they ran out of work and he was sent home in ten months.

Q. How long did he stay before he got another contract this time?

A. Well, I think it took them about six months to get some more money and he just sat around and waited. He expected to go at any time, any time from the time he came home.

Q. Wasn't he a little insecure, uneasy about getting another contract? [22]

A. Well, I don't know the why and wherefore, how they obtain this money, but he seemed very certain that it was just a matter of time.

Q. I want to direct your attention again to any letters you might have received from him in 1947. Did he tell you anything about the quarters in which he lived there?

A. Well, he traveled somewhat in Afghanistan from one job to another. In a country that size I believe they're spread out. He wrote me something of the hotels but I believe he spent most of his time at M-K quarters because that's where he was stay-

(Testimony of Helene Burda.)

ing, as far as I know.

Q. The M-K quarters, they were the quarters that were built by the Company?

A. I don't know. I guess they were built by the Company, or taken over by the Company, something like that.

Q. Did he tell you anything about these quarters, I mean the confines of the camp or wherever he was?

Mr. Butler: I object, your Honor. Not proper cross-examination in the scope of the direct examination.

The Court: She may answer.

A. He may have mentioned it but I don't recall anything specific. He was more interested in telling us about the people and the customs and things like that. I don't think his quarters would probably have been anything to write about anyway. [23]

Q. Did he tell you about how heavy his work was?

A. No. I imagine it's a good deal like the work he's always done. It probably was just the same as always.

Q. Did he tell you when he had time to go around and see things?

A. Not especially; I don't think so. He might have mentioned something about it but I don't remember anything specific.

Q. Did he tell you whether the Company had any rules or regulations against mixing with the local population? A. No.

Q. Or against going into cities? A. No.

(Testimony of Helene Burda.)

Mr. Picco: That's all.

The Court: Any other questions, Mr. Butler?

Mr. Butler: I would like to develop one point.

Redirect Examination

Q. (By Mr. Butler): Mrs. Burda, you have been asked on cross examination whether your father told you about his freedom to mix with the local population. Actually, did your father ever mention any dealings that he had with people in Afghanistan, that is, the natives in Afghanistan?

A. Well, they employed the native Afghanistans on certain jobs and he spoke of how they had to teach them [24] various things, if you can call that a dealing.

Q. And let me ask you further if he ever related to you any of his experience with the Government officials of Afghanistan?

A. Yes, I believe they had several parties and things for the M-K people. I think they did. I know he said he was in Kabul and I think he attended some sort of a party, at probably the Consul, I don't really recall exactly where it was but some sort of a social affair.

Q. Now, directing your attention more specifically to business affairs, I'm wondering if your father has related to you his experience in dealing with the representatives of the Kingdom of Afghanistan in connection with the construction work?

A. Well, I——

Q. Just, do you recall that he made any statements to you at all about that?

(Testimony of Helene Burda.)

Mr. Picco: I object to this, Your Honor. I think the stipulation will show that Mr. Waddell was an employee, he was not a supervisory official in any respect. I can't imagine that he could be dictating terms or having dealings with representatives of the Afghan authorities or government.

The Court: She may answer.

The Witness: I can't recall the question right now. I was listening and I've forgotten what the question was. [25]

Q. Mrs. Burda, I was simply asking whether you recall any statements made by your father about his dealings with Afghan officials about the construction contract. If he didn't make any such statements that's all well and good. If he did I would like to know those.

A. Well, this will be very vague because I didn't pay a great deal of attention to it, but on his last trip home he said something that someone over there had approached him about working for the Afghan government, in some capacity, I don't know what it was, but he said he could possibly work into something like that. It is all very vague because I don't recall much about it. I don't believe that he even considered leaving Morrison-Knudsen, but I believe he mentioned something to that effect.

Q. I see. That will be all.

The Court: You are excused.

(Witness excused.)

The Court: Does that constitute Petitioner's case?

Mr. Butler: Sir?

The Court: Does that and the stipulation constitute Petitioner's case?

Mr. Butler: That constitutes Petitioner's case, your Honor.

Mr. Picco: Respondent rests.

The Court: How much time do you wish for briefs? [26]

Mr. Picco: I would like about 45 days after he submits his brief, your Honor.

The Court: You may have 60 days for the original brief; 45 days for Government's reply, and 15 days thereafter for Petitioner's reply.

Mr. Butler: Thank you, your Honor.

Mr. Picco: Thank you, your Honor.

(Whereupon, at 10:20 o'clock a.m., Thursday, October 26, 1950, the above-entitled matter was concluded.) [27]

Filed T.C.U.S. November 13, 1950.

[Endorsed]: No. 13050. United States Court of Appeals for the Ninth Circuit. Gilbert Waddell, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed August 10, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13050

GILBERT WADDELL,

Petitioner-Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

APPELLANT'S STATEMENT OF POINTS
RELIED UPON

In the appeal of the above-entitled cause, the petitioner-appellant above-named intends to rely upon the following point:

That under the facts stipulated and agreed upon by the parties to this action and found as facts by The Tax Court of the United States, and the facts proved by the testimony offered at the hearing of this cause before the said Tax Court of the United States, and the law and regulations agreed to be applicable to and controlling upon said facts, the petitioner-appellant was not a mere transient or sojourner in the Kingdom of Afghanistan in the year 1947, but was a bona fide resident of the Kingdom of Afghanistan during the whole of said year 1947, and that his income earned in the Kingdom of Afghanistan in the year 1947, being earned income as defined in the statute in such cases made and provided and being amounts received from sources

without the United States by a citizen of the United States, was exempt from taxation by the United States.

/s/ JAMES F. BUTLER,
Attorney for Petitioner-
Appellant.

[Endorsed]: Filed Aug. 24, 1951. Paul P. O'Brien,
Clerk.